

A JURIDICAL ANALYSIS OF RECENT EVOLUTIONARY
DEVELOPMENTS CONCERNING NAVAL INTERDICTION OF
SEABORNE COMMERCE AS A VIABLE SANCTIONING DEVICE

Bruce Alan Clark

A JURIDICAL ANALYSIS OF RECENT EVOLUTIONARY
DEVELOPMENTS CONCERNING NAVAL INTERDICTION OF
SEABORNE COMMERCE AS A VIABLE SANCTIONING DEVICE

By

Bruce Alan Clark
B.A. June 1957, Cornell University
J.D. December 1964, University of Denver

A Thesis presented to

The Faculty of

The National Law Center
of
The George Washington University
in partial satisfaction
of the requirements for the degree of
Master of Laws

. Thesis directed by

William Thomas Mallison, Jr.
Professor of Law

September 30, 1972

7148496

These
C 48066

002841T

Preface

The basic complementary policies embodied in the contemporary prescriptions on recourse to coercion are reasonably clear. In its prohibition of certain coercion, the community attempts to effect a policy of promoting change through procedures of peaceful persuasion. . . .1

Myres S. McDougal
Law and Minimum World Public Order
(1961)

TABLE OF CONTENTS

Preface	i
-------------------	---

Chapter

I. INTRODUCTION AND BACKGROUND	1
II. SUMMARY OF TRADITIONAL INTERDICTION MEASURES . .	12
A. Blockade	12
B. Pacific Blockade	19
C. Boycott	22
D. Embargo	23
III. ORIGIN OF MODERN MARITIME INTERDICTION PROCEDURES: THE CUBAN MISSILE QUARANTINE	25
A. Summary of the Circumstances Leading to the 1962 Presidential Proclamation Establishing the Cuban Quarantine Inter- diction	25
B. Application of Selective Naval Quarantine- Interdiction Sanctions Required to Preclude Uncontrolled Nuclear Confront- ation	27
IV. RECENT INNOVATIONS: THE UNITED STATES MINING AND SUPPLY INTERDICTION OPERATION CONDUCTED IN NORTH VIETNAMESE TERRITORIAL WATERS	32
A. Historic Development of Mine Warfare . .	32
1. Civil War Experience	33

B.	How Modern Underwater Mines work	34
1.	The Magnetic Type Mine	35
2.	The Acoustic Type Mine	37
3.	The Pressure Type Mine	37
C.	United States Mine Warfare Experience in the Pacific During World War II and Korea	39
1.	The United States World War II Mine Blockade of Japan	39
2.	The United States Mine Warfare Experience in Korea: The Lesson of the Wonsan Invasion	46
D.	Circumstances Leading to the Commencement of Naval Interdiction Operations of North Vietnamese Harbors	52
1.	Presidential Announcement Describing the Need to Mine North Vietnamese Harbors so as to Interdict Seaborne Commerce	52
2.	Justification Advanced by U.N. Ambassador George H. Bush in Communi- cation to the United Nations	55
3.	Amplifying Remarks Made by Presiden- tial Adviser, Dr. Henry A. Kissinger	57
4.	Remarks of Deputy Secretary of Defense Kenneth Rush	59
5.	Explanation of United States Activi- ties Presented by Secretary of Defense Melvin Laird	62
E.	Evaluation of Strategic Planning, Imple- mentation and Policy Considerations Related to United States Naval Interdiction Activi- ties	64

34	1. The Economic Development of the World
35	2. The Economic Development of the World
36	3. The Economic Development of the World
37	4. The Economic Development of the World
38	5. The Economic Development of the World
39	6. The Economic Development of the World
40	7. The Economic Development of the World
41	8. The Economic Development of the World
42	9. The Economic Development of the World
43	10. The Economic Development of the World
44	11. The Economic Development of the World
45	12. The Economic Development of the World
46	13. The Economic Development of the World
47	14. The Economic Development of the World
48	15. The Economic Development of the World
49	16. The Economic Development of the World
50	17. The Economic Development of the World
51	18. The Economic Development of the World
52	19. The Economic Development of the World
53	20. The Economic Development of the World
54	21. The Economic Development of the World
55	22. The Economic Development of the World
56	23. The Economic Development of the World
57	24. The Economic Development of the World
58	25. The Economic Development of the World
59	26. The Economic Development of the World
60	27. The Economic Development of the World
61	28. The Economic Development of the World
62	29. The Economic Development of the World
63	30. The Economic Development of the World
64	31. The Economic Development of the World
65	32. The Economic Development of the World
66	33. The Economic Development of the World
67	34. The Economic Development of the World
68	35. The Economic Development of the World
69	36. The Economic Development of the World
70	37. The Economic Development of the World
71	38. The Economic Development of the World
72	39. The Economic Development of the World
73	40. The Economic Development of the World
74	41. The Economic Development of the World
75	42. The Economic Development of the World
76	43. The Economic Development of the World
77	44. The Economic Development of the World
78	45. The Economic Development of the World
79	46. The Economic Development of the World
80	47. The Economic Development of the World
81	48. The Economic Development of the World
82	49. The Economic Development of the World
83	50. The Economic Development of the World
84	51. The Economic Development of the World
85	52. The Economic Development of the World
86	53. The Economic Development of the World
87	54. The Economic Development of the World
88	55. The Economic Development of the World
89	56. The Economic Development of the World
90	57. The Economic Development of the World
91	58. The Economic Development of the World
92	59. The Economic Development of the World
93	60. The Economic Development of the World
94	61. The Economic Development of the World
95	62. The Economic Development of the World
96	63. The Economic Development of the World
97	64. The Economic Development of the World
98	65. The Economic Development of the World
99	66. The Economic Development of the World
100	67. The Economic Development of the World

Chapter

F.	Description of Naval Interdiction Techniques Employed by the United States	79
1.	Composition, Deployment and Tactics of United States Interdiction Forces	79
2.	Notification Methods Employed by the United States to Warn Foreign Nations	84
3.	Preliminary Results of United States Mining Interdiction Measures . . .	86
G.	Reactions to United States Mining and Naval Interdiction Operations . . .	93
1.	Domestic Reaction	93
2.	Soviet Reaction	96
V.	LEGAL ANALYSIS OF THE UNITED STATES MINING AND NAVAL INTERDICTION OPERATIONS IN NORTH VIETNAMESE TERRITORIAL WATERS	101
A.	Comparison Between the 1972 United States Mining Interdiction and the United States Cuban Missile Quarantine of 1962	101
1.	Similarities Between the 1962 Cuban Missile Quarantine and the 1972 Mining Interdiction Campaign . . .	101
a.	Necessity and Proportionality Considerations	101
b.	Claims of Interference with Navigation on the High Seas	107
c.	Claims of Unlawful, Unilateral Imposition of Maritime Blockade	111

Chapter

2.	Significant Differences Between the 1962 Cuban Missile Quarantine and the Present U.S. Mining Interdiction Campaign . . .	115
a.	Nature of Objectives	115
b.	Scope of Operations	118
c.	Duration of the Campaign	122
B.	Evolutionary Trends Arising From the Circumstances Surrounding the Current U.S. Mining Interdiction Campaign	124
1.	Localization of Impact	124
2.	Degree of Notification	128
3.	Avoidance of Unnecessary Confrontation	134
4.	Modification of Tactics So As to Moderate the Scope of Claims	138
C.	Value Conserving Considerations Shown During the 1972 U.S. Mining Interdiction Campaign	147
1.	The Employment of Comprehensive Warning Measures	147
2.	The Exemption of Small Vessels From Maritime Restrictive Measures	148
3.	The Attempt to Minimize Loss of Life and Human Suffering	151
VI.	RECOMMENDATIONS	159

A JURIDICAL ANALYSIS OF RECENT EVOLUTIONARY
DEVELOPMENTS CONCERNING NAVAL INTERDICTION OF
SEABORNE COMMERCE AS A VIABLE SANCTIONING DEVICE

I. INTRODUCTION AND BACKGROUND

When President Nixon announced on May 8, 1972 ¹ that he had ordered the entrances to North Vietnam's ports and harbors mined so as to prevent access by foreign shipping to Communist docking facilities and to deny North Vietnamese naval forces their bases of operation, the almost immediate response by correspondents, columnists and commentators of various media was to either call the President's action a "blockade" or to contrast it to President John F. Kennedy's Cuban Missile Proclamation made almost ten years earlier. ²

As could be expected, the action which President Nixon undertook was subject to intense and sometimes vitriolic public reaction ranging from criticism that such action was unwarranted, unlawful and excessive to praise that the President's action was justified, lawful and long overdue. Two lawyer publicists who were among the most vociferous critics of President Nixon's actions were former Presidential Aide Theodore Sorensen and former Legal Adviser of the Department of State Abram Chayes.

THE HISTORY OF THE
REPUBLICAN PARTY IN
THE STATE OF NEW YORK

THE HISTORY OF THE

REPUBLICAN PARTY IN THE STATE OF NEW YORK
FROM 1814 TO 1860
BY
JAMES C. HARRIS
NEW YORK: PUBLISHED BY J. B. LIPPINCOTT & CO., 15 N. 2ND ST.
1861

Both of these men had played an active role in advising President Kennedy during the 1962 Cuban Missile Crisis. Mr. Sorensen, commenting in an article published in The New York Times, analyzed the Soviet's 1962 Cuban threat which he characterized as a rapid, clandestine and closeby offensive missile buildup by contrasting it to the Soviet's current South East Asia supply activity which he characterized as being an open, systematic and distant delivery of conventional weapons to their North Vietnamese ally. From this analysis, Mr. Sorensen concluded that the immediacy and magnitude of the threat which President Kennedy faced in 1962, amply justified his Cuban Presidential Proclamation which established a formidable but selective quarantine-interdiction whereas President Nixon's far reaching North Vietnamese mining order could, in no way, be considered as being justified since the United States was neither presently confronted with an equivalent crisis nor remotely faced with a comparable threat.³ Mr. Sorensen also noted that whereas President Kennedy's quarantine-interdiction remained flexible and was not directed against vessels carrying "food, petroleum, medicine and the necessities of life," President Nixon's maritime mining measures were directed against all foreign shipping and therefore lacked the high degree of discretionary, executive control which the Kennedy Proclamation possessed.

Writing in The Washington Post two days later, Professor Abram Chayes questioned the apparent avoidance by President Nixon of the term "blockade" in the Presidents announcement of May 8, 1972. ⁴ Professor Chayes followed with a discussion of the principle of freedom of navigation on the high seas by non-belligerents as well as the historical development of the rules of blockade and contraband. Professor Chayes compared President Nixon's mining announcement with the action taken by President Kennedy during the Cuban Missile Crisis but observed that the inherent right of self-defense presently used by the United States to justify its mining activities had, of necessity, to be based on the threat of force against U.S. troops in South Vietnam since the United States was not a party to the conflict.⁵

Finally, Professor Chayes observed that:

What . . . President Nixon has ordered is not so different from [the] indiscriminate attack on non-belligerent [North Vietnamese bound] shipping. Perhaps there is a difference from what the German U-boat commanders did in 1917, but only if the impersonality of dropping mines is somehow cleaner than firing torpedoes."

It should be pointed out, however, that Professor Chayes comparison between the United States use of an announced and highly restricted naval mining interdiction operation conducted

in North Vietnam's territorial waters with the unannounced and unrestricted World War I submarine warfare campaigns conducted by Germany on the high seas is not a sound analogy. For unlike the major submarine mining campaigns conducted during World War I and II wherein advanced notification of various danger areas was seldom provided, in the case of the North Vietnamese mining interdiction, adequate notice of the existence and the general location of all hazardous areas was provided by the United States at least three days prior to the activation and arming of all U.S. mines.⁶

It should also be remembered that torpedoes, like bombs and rockets are aimed and released at their targets and are therefore classified as offensive weapons while mines, whether used by a nation for its coastal defense or for offensive purposes such as a shipping interdiction measure, remain exclusively passive weapons. That is to say, that the target vessel cannot be actively sought out by the mine and must therefore itself come within the proximity of the minefield in order to be destroyed.

In addition, it has seldom been recognized that mine warfare is really more humanitarian than other modes of warfare since a mining interdiction campaign enables the winner to materially reduce the resistance of a foe through the reduction of supplies and war materials without the actual necessity of

killing one's foe. Ships lost in a mine field enter it by their own choice; and those maritime nations supplying an enemy are free to keep their vessels and supplies out of mined waters or attempt to supply belligerent nations by other alternative means. It is precisely because modern minefields are so sophisticated, highly effective and not easily subject to countermeasures, that nations conducting maritime supply operations with a blockaded target country normally tend to give offensive minefields a wide berth. The mark of a successful mining operation , therefore, is not necessarily the number of ships destroyed or enemy killed, but rather the absence or significant reduction in shipping from the mined coastal areas of the target state.

A principle purpose for which a nation seeks to interdict its enemy's seaborne commerce is to obtain delays in the delivery of the enemy's weapons, munitions and other articles of war. While not always apparent, it is a fact that every ship sailing which is delayed, even for one day, represents a loss of cargo. Thus, it should be made clear that a mining interdiction campaign is principally directed against the exclusion and curtailment of the enemy's supplies and not the killing and extermination of the enemy's population as an intended foe.

Finally, a mining interdiction limited to the approaches of the ports and harbors of a belligerent target state is, in

...the fact that the ... is a ... of ...
...the fact that the ... is a ... of ...
...the fact that the ... is a ... of ...
...the fact that the ... is a ... of ...
...the fact that the ... is a ... of ...
...the fact that the ... is a ... of ...
...the fact that the ... is a ... of ...
...the fact that the ... is a ... of ...

...the fact that the ... is a ... of ...
...the fact that the ... is a ... of ...
...the fact that the ... is a ... of ...
...the fact that the ... is a ... of ...
...the fact that the ... is a ... of ...

...the fact that the ... is a ... of ...
...the fact that the ... is a ... of ...
...the fact that the ... is a ... of ...
...the fact that the ... is a ... of ...
...the fact that the ... is a ... of ...
...the fact that the ... is a ... of ...
...the fact that the ... is a ... of ...
...the fact that the ... is a ... of ...
...the fact that the ... is a ... of ...
...the fact that the ... is a ... of ...

...the fact that the ... is a ... of ...
...the fact that the ... is a ... of ...
...the fact that the ... is a ... of ...
...the fact that the ... is a ... of ...
...the fact that the ... is a ... of ...

most instances a less provocative measure than involving the sanctions of a "traditional" blockade which can require the searching, seizing, sequestering or even sinking of vessels on the high seas. Thus, the value of an effective naval interdiction campaign established through the utilization of aerial mines, surface vessels or a combination thereof, remains an extremely important and humanitarian sanctioning device which is intended to minimize the loss of life and property while avoiding an uncontrollable confrontation between super-powers.

Writing in rebuttal to Professor Chayes' caustic commentary, Professor John Norton Moore has noted that international law recognizes the right of a belligerent to interdict the flow of supplies to the enemy by naval blockade and, as is true of the law of hostilities generally, the applicability of the law of blockade depends on the factual existence of a state of international hostilities and does not require a formal declaration of war.⁷

Professor Moore has written that:

The law of blockade represent[s] a compromise between the interests of non-belligerents in minimal disruption of shipping and the interests of belligerents in preventing war materiel from reaching the enemy. Through the compromise permits interdiction of commerce with the enemy, it requires notification as a means of enabling non-belligerents to avoid the blockade zone and the attendant risk of seizure.

was founded in 1884 by the late Mr. J. H. ...
... of the ...
... of the ...
... of the ...
... of the ...
... of the ...
... of the ...
... of the ...

...

... of the ...
... of the ...
... of the ...
... of the ...
... of the ...
... of the ...
... of the ...
... of the ...

...

...

... of the ...
... of the ...
... of the ...
... of the ...
... of the ...
... of the ...
... of the ...
... of the ...

Professor Moore has further observed that at a time when twelve North Vietnamese divisions were streaming into the South and many major South Vietnamese cities were under siege, it was the magnitude of the threat to South Vietnam and not just the safety of U.S. forces stationed there that permitted the United States to jointly act with the South Vietnamese Armed Forces in exercising the right of collective self-defense. Professor Moore concludes that the decision to avoid the term "blockade" was part of a series of careful limitations intended to minimize the risk of confrontation with all non-belligerents, particularly the Soviet Union, and to avoid any implication of a "long distance blockade" or any variety of other broad claims which have traditionally been associated with the principles of unrestricted maritime blockade.

The remarks expressed by the foregoing writers would, therefore, seem to point out that not only are there significant differences of opinion as to whether President Nixon's maritime interdiction measures were necessary and proportional but also whether the doctrines pertaining to naval or maritime interdiction were flexible enough to permit such an innovative mining interdiction procedure to be employed by the United States regardless of whether the circumstances pertaining to that particular mode of mine warfare and the realities of strategic power alignments might have clearly required such a

modification to be undertaken.

In this regard, Professor Myres S. McDougal writing in his book Law and Minimum World Public Order⁸ has observed that:

Much more effective than explicit agreement in the prescription of the law of war has been the less easily observed, slow, customary shaping and development of general consensus or community expectation. Decision-makers confronted with difficult problems, frequently presented to them in terms of principles as vague and abstract as "the laws of humanity and the dictates of public conscience" and in terms of concepts and rules admitting of multiple interpretations, quite naturally have had recourse both to the experience of prior decision-makers and to community expectation about required future practice and decision. The myth is that certain practices are repeated and mutually tolerated over a period of time by a substantial number of decision makers in the context of "oughtness" or "authority," a certain customary rule or principle of law emerges. On a more realistic level, the function of this myth is to permit and authorize decision-makers to achieve a more rational balancing of past experience, contemporary realities, and future probabilities without appearing to create new policy.

In describing such an evolutionary capacity with which conventional and customary prescriptive developments have been adapted to those rapidly changing technological fields as blockade, submarine and air warfare, Professor McDougal writes that:

The process of customary development, considered as one continual, creative readaptation or reinterpretation of given prescription, whether conventional or customary, is particularly marked when it is in response to patterns of interaction, such as blockade and submarine and air warfare, which are themselves the cause of altered conditions and fast developing technology and technique, in a process of profound and rapid change. In such cases, the rate of attrition or obsolescence of particular inherited rules may be accelerated and the emergence of new ones hastened.⁹

In 1958, Captain (later Rear Admiral) Robert D. Powers Jr.¹⁰ in an article entitled "Blockade: For Winning Without Killing,"¹¹ greatly influenced U.S. naval thinking by stressing the urgent need for a re-evaluation of the customary rules of international law pertaining to measures short of war such as pacific blockade and quarantine-interdiction. In his article, Admiral Powers wrote that:

The accepted rules of blockade are now in a state of evolution. The rules stated in most text books and even in the naval publications of nations, including the U.S. Navy's "Law of Naval Warfare," are those developed primarily in the nineteenth century and thus antedate the era of fast and powerful ships, submarines, airplanes, and guided missiles. These rules do not fit the conditions resulting from the increasing importance of economic factors in war and the mobilization of all resources of a nation for the war effort, nor do they provide for the extended use of blockade as a means of preventing war through deprivation of trade.¹²

In forecasting some of the interdiction procedures which might be used in the future, Rear Admiral Powers wrote:

The method by which blockade will be enforced can be expected to change. Submarines and minefields will be employed. . . . Furthermore, they [submarines and surface ships] can dispatch swift surface ships or swifter aircraft to intercept the would-be blockade runner.

. . . .

Aircraft operating from a supercarrier can be used to maintain a blockade over a large area. Control of surface ships approaching a blockaded area could be exercised by radio. For example, ships might be instructed by a plane to change course to converge with a surface vessel of the blockading power.¹³

In describing the possibilities of using a U.N. sanctioned blockade as a measure of collective security and as a measure short of war which was comparable to "pacific blockade," Admiral Powers wrote:

. . . [O]ne of the interesting possible uses of blockade is a measure of collective security under Article 42 of the [U.N.] Charter. Such a blockade might have a limited purpose and thus be comparable to "pacific blockade." Under modern conditions, however, it might be completely ineffective if it limited only ingress and egress of ships of the blockaded nation. A blockade by the United Nations, though adopted as a measure short of war, would probably have utilized measures normally used only in [a] belligerent blockade.¹⁴

The Committee has the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the proposed amendment to the Constitution of the State of New York.

The matter is being considered by the Committee on the subject of the proposed amendment to the Constitution of the State of New York, and it is the duty of the Committee to report thereon to the Senate and Assembly.

Very respectfully,
Your obedient servant,
J. B. Thompson,
Secretary of the Committee on the subject of the proposed amendment to the Constitution of the State of New York.

The Committee on the subject of the proposed amendment to the Constitution of the State of New York, has the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the proposed amendment to the Constitution of the State of New York.

Very respectfully,
Your obedient servant,
J. B. Thompson,
Secretary of the Committee on the subject of the proposed amendment to the Constitution of the State of New York.

The Committee on the subject of the proposed amendment to the Constitution of the State of New York, has the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the proposed amendment to the Constitution of the State of New York.

What Admiral Powers was apparently advocating was that those measures which were highly effective but the least provocative and which were normally associated with a war-time belligerent blockade should be selectively adapted to "peacetime" naval interdiction situations which would become more acceptable to non-belligerent trading nations as measures short of war thereby eliminating the most provocative of the belligerent blockade sanctions such as condemnation, sinking, searching and seizure.

Accordingly, this thesis will evaluate recent evolutionary trends whereby United States decision makers have endeavored to selectively modify or adapt the principles historically associated with the concept of belligerent blockade to maritime interdiction situations which were intended to present narrower sanctioning claims or represent acts which were intended as measures short of war.

In order to provide the necessary background pertaining to those measures which have "normally" been employed during belligerent blockade, a brief resume of the traditional twentieth century concepts pertaining to blockade and its related theories is set forth in the materials following this introduction.

That Social Justice was necessary for the

those who were with him in the last

promotive and with him in the last

the following points which are

the following points which are

the following points which are

the following points which are

the following points which are

the following points which are

the following points which are

the following points which are

the following points which are

the following points which are

the following points which are

the following points which are

the following points which are

the following points which are

the following points which are

the following points which are

the following points which are

the following points which are

the following points which are

II. SUMMARY OF TRADITIONAL INTERDICTION MEASURES

A. Blockade

According to Lauterpacht's International Lawtreatise, a blockade is the blocking by men-of-war of the approaches to the enemy's coast, or any part of it, for the purpose of preventing ingress and egress of vessels or aircraft of all nations.¹⁵ Although blockade is a means of warfare against the enemy, it also concerns neutrals as well because ingress and egress of neutral vessels are subject to interdiction and breaches thereof may be severely punished.¹⁶

The development of blockade as a twentieth century institution was not possible until neutrality was in some form recognized as an institution of the Law of Nations and this did not fully develop until freedom of neutral commerce was in some form guaranteed. The origin of the institution of blockade dates from 1584 and 1630 when the Dutch Government declared all the ports of Flanders in the power of Spain to be blockaded.¹⁷ However, it was not until the rejection of the so called "paper blocblockades" of the late nineteenth century that blockade was required to be a total military committment in order to be binding and effective.¹⁸

The right of a belligerent to blockade an enemy's coast provided it uses "competent force" is provided for under the Law of Nations.¹⁹ However, in order to exercise this right, a belligerent must satisfy the following requirements. First, the nation intending to establish a blockade must provide suitable and timely notice of his intentions.²⁰ This means that the Declaration of a blockade must be communicated to (1) neutral powers, by diplomatic means; and (2) to local authorities by the commander of the blockading fleet.²¹

A second requirement is that after proper notification has been provided, the blockade must be effectively maintained.²² The third requirement for a lawful blockade is that the blockade to be valid, must be impartially enforced.

The condition of effectiveness of a blockade, as defined by the Declaration of Paris, is that it must be maintained "by such force as is sufficient to really prevent access to the coast."²³ During the early stages of the development of the concept of blockade, some Continental countries took the view that this provision was intended to require "a chain of men-of-war, anchored on the spot, and so near to one another that the line cannot be passed without obvious danger to the passing vessel."²⁴ Subsequently, however, considerably broader definitions were formulated so that an effective blockade was later

deemed capable of being established "by a force sufficient to render egress and ingress dangerous . . . and sufficient to render capture of vessels attempting to go in or come out most probable." ²⁵ Ultimately, however, the requirement for the establishment of an effective blockade was relaxed to the point that during the United States Civil War, Union naval forces were considered able to effectively blockade 2500 miles of Confederate coastline with only 400 Union vessels.

Declaration of London

In order to establish formal rules pertaining to the use of naval blockades, twentieth century sea powers, governed by strong isolationist sentiment and neutrality oriented interests convened a conference in London in 1908 which produced a document which later became known as the "Declaration of London of 1909." The Declaration provided that (1) a blockade must be limited to the enemy's coasts and must not bar access to neutral ports, (2) to be legal, the blockade must be effective, (3) the blockade must be applied impartially throughout the blockaded area, (4) the blockade commander would have the discretionary power to permit warships from other nations to enter and depart the area and,

(5) the blockade had to be declared with sufficient specificity as to given dates, locations and boundaries. ²⁶

However, the concepts embodied in the Declaration of London saw little use during the First World War which would be fought less than ten years later. Instead of the so called "close in" traditional type blockade which had historically been used in Europe and which required blockading men-of-war to "hover" off the enemy's coasts, the Allies resorted to the so called "long distance" blockade which was an entirely new and different form of maritime interdiction. The reason for this sudden change of strategy was that during World War I, military decision makers saw the need to employ comprehensive economic and supply suppressing measures through the use of "war zones" and vast mine areas thereby greatly expanding the scope of a belligerent's economic warfare and blockade operations. ²⁷ In addition, the rapid development of such offensive weapons as aircraft and long range submarines were two of the principle reasons why the continued maintenance of the "close in" type blockade was considered to be so dangerous that its future use was no longer considered to be feasible. ²⁸ As Professor McDougal has pointed out:

(1) the absence of the evidence, the negative possibility
as to other dates, locations and conditions, 12

However, the Committee believes in the possibility of

London and Berlin are within the time limits set forth
in paragraph 1 of the report. London is the only

"about 15" (approximately) from London with the possibility

been used in Europe and other countries (including the United

to "cover" all the other's (including the United Kingdom) in the

to which these (including London) have been used in the

and (including the use of various locations). The other

this (including the use of various locations) and the

efforts (including the use of various locations) and the

efforts (including the use of various locations) and the

of the country and the other (including the use of various

the use of a (including the use of various locations) and the

conclusion. 13 In addition, the use of various locations

efforts (including the use of various locations) and the

use of the (including the use of various locations) and the

use of the (including the use of various locations) and the

use of the (including the use of various locations) and the

conclusion. 14 In addition, the use of various locations

old style techniques of "close in" blockade] against the coasts of an enemy great power would not only be confronted with mines and long range shore batteries but would also present a choice target for attack by submarines, aircraft [and now, surface-to-surface and air-to-surface] missiles. 29

Thus the traditional sanctions associated with hostile blockade such as interception, visit, search, capture and condemnation [in prize] were no longer militarily feasible and military decision makers soon relied upon a more comprehensive global approach than merely instituting local maritime interdiction measures.

The Long Distance (Economic) Blockade

By utilizing a comprehensive system of "war zones" and a system of wartime commercial "passports" or "letters of assurance" called "NAVICERTS," the belligerents during World War II (and to some extent during the later stages of World War I) utilized a complex system of strategic goods controls in an effort to deny the enemy access throughout the entire world, to the raw materials he needed in order to sustain his wartime operations. This form of economic warfare was designed to maximize the adverse impact that such a denial of strategic goods would have on the ability of an enemy to maintain both his military establishment

band or prohibited goods, which were excluded for both importation and exportation purposes, were vigorously enforced by both sides. It should also be noted that the "scope" of what was considered to be "contraband" when used in the context of the contraband of war during a naval blockade was generally determined by the belligerents themselves as being that which was unauthorized for import or export purposes. 30

The contraband was called "Absolute" if it consisted of prohibited materiel such as weapons, ammunition, or naval stores. 31 Materiel which was more susceptible to peaceful utilization was called "Conditional" contraband. 32

Absolute contraband could be seized and condemned by a belligerent without giving notice of any kind so long as the goods were apparently destined for the belligerent's adversary. 33 However, conditional contraband was subject to seizure and condemnation normally after more rigorous requirements of notice, "a resolution of the ambiguity inhering in their susceptibility to both military and nonmilitary types of use," and a determination that the goods were actually destined for use by the "enemy" had been met. 34

In addition to these primary methods of goods control, certain other auxiliary control methods were devised and developed by the Allied Powers to buttress and enforce the "rationing of neutrals" and to enhance the effectiveness of

the navicert system. ³⁵ One such scheme included the issuance of the "ship's warrant," a document which was issued to each vessel whose owner had given satisfactory assurance to do what the Allies required of him. In general, the owner agreed to comply with economic warfare, or blockade and contraband regulations and, in particular, he agreed that his ships would not sail to or from the areas which required a Navicert without possessing such a document. In return, the ship owner was guaranteed that his ships would have access to insurance, credit, fuel bunkers, stores, charts and dry dock and repair facilities over which the Allied Powers exercised authority and control. ³⁶

By the selective manipulation and administration of such shipping controls, an awesome array of economic sanctions could be imposed on a "neutral" shipper if he failed to adhere to the requirements set forth by the Allies. ³⁷ After the United States entered the war, these economic sanctions became overwhelming. This was because not only were the ship warrant and Navicert schemes important to the Allies for the purposes of interdicting and controlling seaborne commerce, but these measures were also considered vital in order to secure merchant ship bottoms for the carriage of Allied cargoes. ³⁸

and constant system. If the last system included the

insurance of the "active" system, a constant ship was

issued to each vessel upon which the ship's

insurance to be paid the ship's insurance of the ship's

the vessel's insurance to be paid the ship's insurance of the ship's

and constant insurance and to be paid the ship's

that the ship's insurance and to be paid the ship's

insurance to be paid the ship's insurance and to be paid the ship's

in return, the ship's insurance and to be paid the ship's

would then become the ship's insurance and to be paid the ship's

which are the ship's insurance and to be paid the ship's

which are the ship's insurance and to be paid the ship's

at the insurance and to be paid the ship's

and to be paid the ship's insurance and to be paid the ship's

which are the ship's insurance and to be paid the ship's

at the insurance and to be paid the ship's

which are the ship's insurance and to be paid the ship's

which are the ship's insurance and to be paid the ship's

which are the ship's insurance and to be paid the ship's

which are the ship's insurance and to be paid the ship's

which are the ship's insurance and to be paid the ship's

which are the ship's insurance and to be paid the ship's

These comprehensive "total" war economic and regulatory controls became increasingly sophisticated and more thoroughly implemented as the war progressed. However, it is almost a certainty now that since the advent and reality of modern warfare methods including the possibility of both nuclear and local limited warfare, that such stringent economic measures are not likely to be either planned or repeated in the future.

B. Pacific Blockade

Pacific blockade is the attempt by one nation to effectuate maritime restrictive measures against the seaborne trade of another. The significant advantages which the proponents of "pacific blockade" have espoused is that neutral commerce traveling to the blockaded nation's ports is not adversely affected and the interdiction measures sought to be imposed can be commenced without the necessity of a declaration of war or the necessity of the existence of the state of such hostilities being proclaimed. One thing is certain, however, and that is that if the nation against whom these maritime measures are directed chooses to treat them as being something other than "pacific," then in all likelihood the commencement of these measures will provoke either an armed conflict or the possibility of an all out war itself.

The utilization of surface vessels in the development of the concept of "pacific blockade" was familiar to the publits of the late nineteenth and early twentieth centuries. 39

However, the acceptance of this concept of minimal force level application was far from established in international law and was particularly objected to by early twentieth century Unites States Naval sea power proponents who viewed pacific blockade as being entirely nonamicable in nature. 40

Hyde ⁴¹ describes the term pacific blockade as referring to the cutting off of access to or egress from a foreign port or coast by a naval force designed to compel the territorial sovereign involved to yield to the demands made of it, such as granting redress for the consequences of wrongful conduct, and whereby the blockading state does not purport to bring into being a state of war. Such action is deemed to be pacific merely in the sense that the blockading state is disposed to remain at peace, while the state whose territory or maritime commerce is blockaded does not elect to treat the operation as producing war or compelling it to make war on its potential adversary.

A description of the consequences which follow in a pacific blockade is set forth in the United States Naval

The decision of the court in the case of

of the company of the United States and the United States

of the first instance and the second instance.

However, the decision of the court in the case of

level of the court in the case of the United States

and was not only the United States but also the United States

United States and the United States and the United States

However, the decision of the court in the case of

and the United States and the United States and the United States

to the United States and the United States and the United States

of the United States and the United States and the United States

However, the decision of the court in the case of

and the United States and the United States and the United States

and the United States and the United States and the United States

and the United States and the United States and the United States

and the United States and the United States and the United States

and the United States and the United States and the United States

and the United States and the United States and the United States

and the United States and the United States and the United States

and the United States and the United States and the United States

and the United States and the United States and the United States

and the United States and the United States and the United States

War College International Law Situations 1932 as follows:

Some act resembling pacific blockade has been generally regarded as one of the methods for bringing an offending state to terms without resort to war. Pacific blockade has the support of long practice and of a large majority of authorities, particularly since support given this form of action in resolutions of the Institut de International in 1887. In general, the establishing of a pacific blockade is usually approved on the ground that it may make resort to war less probable, and thus limit the range of possible use of force.

In its effects as between the state or states establishing the blockade, the blockade may close the blockaded areas to communication so far as it is effectively maintained and measures lawful for maintenance of a war blockade may be taken to this end. As the effects of pacific blockade should, so far as possible, be confined to the parties concerned, third parties as well as their vessels and goods should be interfered with only as necessary for physical maintenance of the blockade. This is also evident from the fact that there are no prize courts to pass upon rights. It may be necessary that the blockading forces approach, within the specific area of effective maintenance of the blockade, vessels of third states for verification of their right to fly the flag. The blockading force may take such measures as are necessary for closing the port before which it is maintaining an effective blockade. Though it may not take vessels of third states as prize, it may prevent their entrance; and for such detention the blockading state assumes no liability, though notice must be given the vessel of the third state at the time of blockade or in an unquestionable manner. [Finally], [v]essels of third states must be granted reasonable time to load and depart from a port [being placed] under pacific blockade. 42

From our research, we have found that the girl is generally regarded as one of the most important figures in the family. She is the one who is responsible for the family's well-being and for the family's future. She is the one who is responsible for the family's reputation and for the family's honor. She is the one who is responsible for the family's success and for the family's happiness. She is the one who is responsible for the family's future and for the family's destiny. She is the one who is responsible for the family's well-being and for the family's future. She is the one who is responsible for the family's reputation and for the family's honor. She is the one who is responsible for the family's success and for the family's happiness. She is the one who is responsible for the family's future and for the family's destiny.

In the United States, the girl is regarded as one of the most important figures in the family. She is the one who is responsible for the family's well-being and for the family's future. She is the one who is responsible for the family's reputation and for the family's honor. She is the one who is responsible for the family's success and for the family's happiness. She is the one who is responsible for the family's future and for the family's destiny. She is the one who is responsible for the family's well-being and for the family's future. She is the one who is responsible for the family's reputation and for the family's honor. She is the one who is responsible for the family's success and for the family's happiness. She is the one who is responsible for the family's future and for the family's destiny.

C. Boycott

Boycott as a modern form of retaliatory action involving the suspension of business and trade relations on the part of the nationals of an injured state as taken against the individual citizens of an offending country. ⁴³ This private, collective refusal to continue to buy goods from the offending nation, so long as it does not involve pressure or persuasion from the government of the aggrieved citizens, is said to constitute a private remedy which is therefore outside the purview of international law.

However, if the government of the injured parties becomes involved in any manner, this involvement may create state responsibility since it involves a form of governmental self help. ⁴⁴

The most famous boycott in modern times was the widespread suspension by Chinese citizens of trade and business relations with Japan in 1931. The Japanese government protested this action as a violation of international law, but China expressed the view that prior illegal acts undertaken by Japanese authorities constituted a far more serious international law violation.

The Committee of Nineteen, appointed by the League of Nations to investigate the findings of a special commission concluded that the Chinese boycott represented a lawful economic reprisal. ⁴⁵

D. Embargo

The final type of traditional interdiction measure relates to the demands by belligerent nations to control or to embargo in varying degrees, the flow of strategic foods and supplies which may enhance the enemy's war potential. ⁴⁶ In its earliest form, embargo consisted of detaining, in port, the vessels of an offending state in order to coerce the latter into remedying a given wrong. The best known American example of this type of embargo was established by Congress under the Act of December, 1807.

During the twentieth century, however, two new forms of embargo emerged as either a unilateral act by a single state or as a collective act of a number of states, to prevent an alleged or potential aggressor from increasing its stock-piles of essential war materials and strategic goods. ⁴⁷

Utilization of a measure such as embargo means that at the outbreak of a conflict, including a civil war, neutral states may prohibit the export of war materials to either or both belligerents by placing an embargo over all exports over which the neutral nation exercises authority or control. ⁴⁸

In modern times, the United Nations has recommended by a vote of 47-0, with 13 abstentions that an embargo on arms, strategic materials and other implements of war be placed on

The first type of institutional intervention
 focuses on the demand for institutional reform in
 control or to change in existing behavior. The first of these
 cases focus on changes which may involve the country's
 potential. ¹ In the earliest form, changes consisted of
 legislation, in part, the enactment of an institutional reform
 order to control the behavior of the country's
 The first institutional reform of this type of reform
 was established by Congress under the act of December, 1947,
 setting the national security, however, the new form
 of reform was not at all a national act in a sense
 that it was a collective act of a number of states, to prevent
 an attempt to prevent intervention from becoming the focus
 of institutional reform. ²
 Utilization of a national act as a means of reform was
 the subject of a conflict, including a civil war, which
 states may prohibit the power of one state to enter or
 both prohibited by giving an example over all states over
 which the treaty action should be subject to control. ³
 In recent times, the United States has recommended by
 a vote of 87-0, with 13 abstentions that no action be taken
 regarding materials and human resources of the United States

the shipment of all such goods to those areas under the control of the Communist Chinese and North Korean Governments. 49

The most recent example of the utilization of embargo was the action taken by the United States on January 1, 1964, when it prohibited all public and private sales of military equipment to the Republic of South Africa pending an end to that country's policy of racial segregation. 50 This step was taken after the United States Government had earlier (in 1962) forbidden the sale to the South African Government of all arms and military equipment which could be used by that government to enforce racial segregation either in South Africa proper or within the confines of Southwest Africa over which the South African Government exercised political authority and military control. 51

III. ORIGIN OF MODERN MARITIME INTERDICTION

PROCEDURES: THE CUBAN MISSILE QUARANTINE

A. Summary of the Circumstances Leading to the 1962 Presidential Proclamation Establishing The Cuban Quarantine- Interdiction

On October 22, 1962, President Kennedy announced that there had been a rapid and clandestine arms build-up by the Soviets which had transformed Cuba into an important strategic base capable of launching long-range and clearly offensive missiles which were weapons of sudden and mass destruction. ⁵² The President went on to state that such an action constituted an explicit threat to the peace and security of all the Americas and was in flagrant and deliberate defiance of the RIO Pact of 1947, the traditions of this nation and hemisphere, the joint resolution of the 87th Congress, the Charter of the United Nations and his own public warnings to the Soviets of September 4th and 13th. ⁵³

The President noted that nuclear weapons were so destructive and ballistic missiles were so swift that any increased possibility of their offensive use would be regarded as a clear threat to peace which would not be tolerated by the United States or the countries of this hemisphere. The Presi-

1. History of the Human Relations in the
1950-1960 Period
The Human Relations in the

On October 15, 1961, the Soviet Union
has been a great and significant step in the
history which has been taken in the
the last decade of the 1950-1960 period
which was a great step in the history of
the Soviet Union. The Soviet Union has
an explicit concern for the world and the
and was in the Soviet Union. The Soviet
1961, the traditions of the Soviet Union
revolution of the 1950-1960 period. The
Soviet Union and his own people in the
Soviet Union and his people in the

The Soviet Union and his people in the
Soviet Union and his people in the
Soviet Union and his people in the
Soviet Union and his people in the
Soviet Union and his people in the

dent went on to say that in order to prevent the use of missiles against this or any other country and in order to secure their withdrawal or elimination from the Western Hemisphere, he had directed that certain "initial" steps be immediately taken. ⁵⁴ The first step taken by the President was to order a "strict quarantine" of all offensive military equipment under shipment to Cuba as well as turning back all ships, wherever found, carrying cargoes of offensive weapons. ⁵⁵

The following day, a quarantine-interdiction was established by President Kennedy's Presidential Proclamation of October 23, 1962. This proclamation entitled "Interdiction of the Delivery of Offensive Weapons to Cuba," ⁵⁶ went into effect at 2:00 P.M. Greenwich time on October 24, 1962. The operative part of the President's proclamation read as follows:

Any vessel or craft which may be proceeding toward Cuba may be intercepted and may be directed to identify itself, its cargo, equipment and stores and its ports of call, to stop, to lie to, to submit to visit and search, or to proceed as directed. Any vessel or craft which fails or refuses to respond to or comply with directions shall be subject to being taken into custody. Any vessel or craft which it is believed is enroute to Cuba and may be carrying prohibited materiel or may itself constitute such materiel shall, wherever possible, be directed to proceed to another destination of its own choice and shall be taken into custody if it fails or refuses to obey such directions. All vessels or craft taken into custody shall be sent into a port of the United States for appropriate disposition.

In carrying out this order, force shall not be used except in case of failure or refusal to comply with directions, or with regulations or directives of the Secretary of Defense issued hereunder, after reasonable efforts have been made to communicate them to the vessel or craft, or in case of self-defense. In any case, force shall be used only to the extent necessary. 57

B. Application of Selective Naval Quarantine-
Interdiction Sanctions Required to Preclude
Uncontrolled Nuclear Confrontation

The principal credit for the operational success of the Naval quarantine-interdiction should be allocated to the United States military forces in their execution of directives emanating from higher authority. As a result of the issuance of these surveillance, confrontation and visit and search directives, vessels of third-party states were trailed, inspected, approached and boarded during various phases of the quarantine-interdiction. 58 Submarines of the Soviet Union in the mid-Atlantic and south-Atlantic were also located, tracked, surfaced and photographed. 59

The Soviet tanker Bucharest was intercepted on October, 25, 1962. Her cargo was checked visually by a unit of the quarantine force and she was allowed to proceed to Cuba. The

Marcula, a Lebanese ship under Soviet charter was boarded enroute to Cuba by units of the United States Navy quarantine force on October 26th. No items of prohibited cargo were discovered and the vessel was cleared to proceed to its destination. ⁶⁰

During the period that the blockade was effective, (October 24th - November 2nd), fifty-five merchant ships were reported to have been allowed to proceed after being scrutinized by United States quarantine-interdiction forces.⁶¹ No vessels were reported to have been forcefully seized or forcefully boarded. ⁶² However, sixteen of eighteen Soviet cargo ships which were enroute to Cuba, were ordered by the Soviets not to enter the quarantine zone and to instead return to the Baltic Sea and Mediterranean areas. ⁶³

The details concerning the quarantine-interdiction procedures which were intended for foreign merchant shipping interests were broadcast by the Navy at regular intervals. For example, the pertinent part of Notice to Mariners, No. 47 (6206) was regularly broadcast and provided in part that,

The President of the United States has proclaimed a quarantine of offensive military equipment under shipment to Cuba. Reactions may make Windward Passage, Yucatan Channel and Florida Straits Dangerous waters. Ships are advised to use Mona Passage. Ships transiting the Straits of Florida are advised to navigate the proximity of the Florida keys. . . . ⁶⁴

1900, a tobacco leaf which was found

was found in the leaf of the tobacco plant

which was found in the leaf of the tobacco plant

which was found in the leaf of the tobacco plant

which was found in the leaf of the tobacco plant

which was found in the leaf of the tobacco plant

which was found in the leaf of the tobacco plant

which was found in the leaf of the tobacco plant

which was found in the leaf of the tobacco plant

which was found in the leaf of the tobacco plant

which was found in the leaf of the tobacco plant

which was found in the leaf of the tobacco plant

which was found in the leaf of the tobacco plant

which was found in the leaf of the tobacco plant

which was found in the leaf of the tobacco plant

which was found in the leaf of the tobacco plant

which was found in the leaf of the tobacco plant

which was found in the leaf of the tobacco plant

The tobacco leaf which was found in the leaf of the tobacco plant

On October 25th, the Department of Defense established submarine procedures for the quarantine area. This entailed notice that United States Naval vessels would require identification according to the international recognition code or signal "IDKCA" meaning "rise to the surface." The transmission of the international code was to be accompanied by the dropping of from four to five harmless explosive sound signals.⁶⁵ The announcement of these signals provided that "submerged submarines, upon hearing this signal, should surface on an easterly course" and that "signals and procedures employed were harmless" and are to "guarantee the safety of submerged submarines at sea in emergencies."⁶⁶

The methods of visit and search of merchant vessels employed by the United States were consistent with the related visit and search provisions contained in the Law of Naval Warfare,⁶⁷ NWIP 10-2, which provides in pertinent part that:

Before summoning a vessel to lie to, a warship must hoist her own national flag. The summons should be made by firing a blank charge, by international flag signal or by other recognized means. The summoned vessel . . . is bound to stop, lie to, and display her colors. . . . If a summoned vessel takes flight, she may be pursued and brought to, by forcible measures if necessary.⁶⁸

A boarding officer should first examine a ship's papers in order to determine her character, ports of departure and destination, nature of cargo and employment, and other facts deemed essential. The papers which are generally found on board a merchant vessel are:

- (a) Certificate of registry of nationality
- (b) Crew list
- (c) Passenger list
- (d) Log book
- (e) Bill of health
- (f) Clearance
- (g) Charter party, if chartered
- (h) Invoice or manifests of cargo
- (i) Bills of lading
- (j) A consular declaration certifying the innocence of the cargo may be included

The evidence furnished by papers against a vessel may be taken as conclusive. However, regularity of papers and evidence of innocence of cargo or destination furnished by them are not necessarily conclusive, and if any doubt exists, the personnel of the vessel should be questioned and a search made, if practicable, of the ship or cargo." 69

Within three days after the commencement of the quarantine, a series of letters was exchanged between President Kennedy and Chairman Khrushchev, whereby it was agreed that the Soviets would stop building their offensive missile bases in Cuba and would dismantle their offensive weapons systems and return them to the Soviet Union. 70

On November 2nd, the President made an interim report to the American people wherein he stated that aerial photographs (presumably taken by U.S. A-3, F-8 and U-2 type aircraft) indicated that the Cuban missile sites were being destroyed. 71

Subsequently, United States Naval forces verified that various "homeward bound" Soviet vessels were carrying what appeared to be offensive type missiles or their supporting equipment as deck cargo. ⁷² These vessels were visually observed to be carrying forty-two crates which appeared to contain the missiles or their respective components. ⁷³ Thereafter, the quarantine was terminated on November 21, 1962 when the President received assurances from Chairman Khrushchev that the Soviet Ilyushin-18 jet bombers would be withdrawn within thirty days. ⁷⁴

1. Civil War Experience

Admiral David Farragut's famous order, "Damn the torpedoes, Four bells!" which the Admiral made during the Battle of Mobile Bay referred not to mobile naval torpedoes but to crude sea mines which the Confederate forces had employed during the Civil War.⁷⁸ At least a dozen different types of mines including spar, percussion, hydrogen and horological were used by Confederate naval forces during the Civil War and were credited with sinking thirty Union ships compared with a loss of only nine vessels due to Confederate gunfire.

By the Wars end, naval commanders such as Admiral Farragut recognized that "there is a natural fear of hidden dangers, particularly when so awfully destructive of human life as the torpedo [sea mine] which requires more than discipline to overcome." ⁷⁹

From the Civil War period until the advent of the massive World War I North Sea Mine Barrage in which 70,000 mines were laid, sea mines remained simple, unrefined but usually effective naval weapons. ⁸⁰ These simple , sea mines consisted of a large charge of explosives encased in a suitable container which was anchored by a chain so that the mine remained undetected while submerged some ten to twenty feet beneath the water's surface. Numerous firing devices called "triggering horns" protruded

...the ... of ...
 ...the ... of ...
 ...the ... of ...
 ...the ... of ...
 ...the ... of ...
 ...the ... of ...
 ...the ... of ...
 ...the ... of ...
 ...the ... of ...
 ...the ... of ...

...the ... of ...
 ...the ... of ...
 ...the ... of ...
 ...the ... of ...
 ...the ... of ...
 ...the ... of ...
 ...the ... of ...
 ...the ... of ...
 ...the ... of ...
 ...the ... of ...

...the ... of ...
 ...the ... of ...
 ...the ... of ...
 ...the ... of ...
 ...the ... of ...
 ...the ... of ...
 ...the ... of ...
 ...the ... of ...
 ...the ... of ...
 ...the ... of ...

from the surface of the mine. In order for the triggering horns to become activated, a passing ship had to physically strike the mine or its triggering horns with some part of its hull. Hence the employment of the term "contact" mine was used to describe these horn studded primitive weapons.⁸¹ However, it was not until the Second World War had been commenced that the naval mine warfare achieved its truly impressive levels of development and sophistication.

B. How Modern Underwater Mines Work

The recent May 22, 1972 issue of TIME Magazine has described the workings of naval mines for its readers in such graphic terms that the following verbatim extract is considered worthy of repeating:

Most people envision underwater mines as sort of studded black balls that Cary Grant dodged in Destination Tokyo. But the delayed-action mines used to seal off North Vietnamese ports last week are considerably more complex. Sown by low-flying Navy planes, some of them were dropped to the surface by parachute; others, equipped with tail fins, plunged straight to the water. Then they were programmed to settle at various depths in patterns designed to frustrate enemy minesweepers. Some were probably sent to the

from the surface of the water. It is noted that the water is very
to become collected, a floating mass and in this way the
line of the floating mass with the rest of the body. The
the movement of the body is not in the same way as the
the body is not in the same way as the body. It is not
with the body and the body is not in the same way as the
surface of the water. The body is not in the same way as the
surface of the water.

2. The body is not in the same way as the

The body is not in the same way as the body. The body is not
called the surface of the water. The body is not in the same way as the
surface of the water. The body is not in the same way as the
surface of the water.

The body is not in the same way as the body. The body is not
called the surface of the water. The body is not in the same way as the
surface of the water. The body is not in the same way as the
surface of the water.

bottom while others were moored by cables. The mines used last week were not the most sophisticated the U.S. possesses - - the risk was too great that one of them, packed with advanced technology might be recovered and eventually wind up in a Russian ordnance laboratory.

A minefield is generally seeded with a variety of devices. Some explode on contact. Some detonate magnetically when they pick up the magnetic field of a passing ship. Others go off when a ship's hull [creates a change] in the water pressure. A mines relatively simple computer can be programmed to react to combinations of signals. Thus some mines are equipped with "counters." They will allow, say, nine ships to pass by and then blow up the tenth. Such mines greatly increase the dangers of mine sweeping, since the [mine] sweeper may be the fatal tenth vessel. Some mines can sit on the bottom for a time, awaiting a coded signal to activate. On signal, they can [even] propel themselves through the water to a different position. . . . 82

1. The Magnetic Type Mine

The magnetic mine, first developed by the British, improved by the Germans and later mass produced by the United States, represented a significant improvement over the old style "contact" type mine which had been in use since the Civil War. For with the magnetic mine, it was no longer necessary for a vessel to actually strike a mine in order to detonate it. All that was required was that a steel hulled vessel which passed close enough - - caused a shifting in the lines of force of the earth's magnetic field - - thereby producing a "signature" of sufficient strength to activate, by induction, the mine's sensitive firing mechanism. At the heart of the mine's firing mechanism, was a sensitive device known as the "dip needles ." 83

In order to nullify the magnetic effects which a ship produces, an expensive and time consuming process called degaussing has occasionally been used by shipbuilders. The degaussing process calls for a steel ship to be equipped with a web of insulated cables girdling its hull so as to carry electric current which creates a magnetic field equal but opposite to that of the earth. This process "demagnetizes" the ship's magnetic field which prevents the ship from activating the mine's "dip needles" so that they will not deflect causing the mine to detonate. However, during periods of mass construction of military and cargo vessels, the degaussing of each vessel is not considered feasible. Therefore, nations have principally relied upon fleets of mine sweepers to detect, remove or neutralize the enemy's [magnetic] type minefields.

In order to sweep an area of magnetic mines, however, a mine sweeper must create the same influence to which the magnetic mine responds. To do this, a mine sweeper must trail two electrical cables approximately 1200 feet astern through which is transmitted a powerfully pulsed electric current. Thus a strong magnetic field is created which is capable of detonating any magnetic mine which is within the cable's influence. 84

2. The Acoustic Type Mine

Sonic and subsonic sounds produced by a passing ship, its machinery or its propellers are amplified to energize the firing circuit of an acoustic type mine. The acoustic type mine can be planted on the sea floor where it utilizes a simple hydrophone or "artificial ear" to hear a ship's engines or propellers. When it does, the firing mechanism's "diaphragm" is caused to vibrate thereby activating the firing circuit.⁸⁵ Mine sweepers attempt to duplicate the equivalent noise of a ship's propellers by safely dragging through the water behind them a mechanism called a "hammer" or a "bumble-bee." This device creates the necessary signature to which the mine's firing mechanism will respond thereby causing it to detonate.⁸⁶

3. The Pressure Type Mine

The pressure mine initially introduced by Hitler during World War II and further perfected by American and British scientists, is regarded as the most "unsweepable" of modern mines particularly when their firing circuits are complicated by a variety of accessories such as arming delays, ship counters, intermittent deactivating mechanisms called "sterilizers" and other anti-sweep devices.⁸⁷

In a pressure type mine, the negative pressure of a passing ship sucks a diaphragm upward thereby closing the firing switch. In order to sweep them, a mine sweeper must try to attempt to duplicate the change of pressure produced by a passing vessel. Since the sensitivity of the pressure mine's firing mechanism can be adjusted to respond to a variety of "hull displacements," it becomes exceedingly difficult for a minesweeper to duplicate, by towing a "guinea pig" hull through the water, the exact amount of negative pressure to which the mine's pre-programmed firing mechanism will become activated. 88

Add to the three basic types of mines (magnetic, acoustic and pressure) a fourth category of mine which combines one or more of the above arming and detonating capabilities in the same mine assembly and incorporates additional arming delay switches, ship counters and other anti-sweep devices - - and you have a formidable, highly sophisticated, effective and virtually unsweepable naval weapon.

Accordingly, the effectiveness of a nation's mining or maritime interdiction campaign will not only depend upon the different types and quantities of naval mines that are at its disposal, but also upon the nature and scope of the mine warfare activities it seeks to conduct in exerting pressure upon its intended enemy. In order to understand more fully some of the different settings in which mine warfare has been employed, the following material relating to selective mining campaigns conducted during World War II and Korea has been included for illustrative purposes.

and for illustration purposes, the following examples are given:

1. The first example is a simple one. It is a sentence which is a statement of fact. It is a statement of fact because it is a statement of something which is true. It is a statement of fact because it is a statement of something which is true.

2. The second example is a more complex one. It is a sentence which is a statement of fact. It is a statement of fact because it is a statement of something which is true. It is a statement of fact because it is a statement of something which is true.

3. The third example is a more complex one. It is a sentence which is a statement of fact. It is a statement of fact because it is a statement of something which is true. It is a statement of fact because it is a statement of something which is true.

4. The fourth example is a more complex one. It is a sentence which is a statement of fact. It is a statement of fact because it is a statement of something which is true. It is a statement of fact because it is a statement of something which is true.

5. The fifth example is a more complex one. It is a sentence which is a statement of fact. It is a statement of fact because it is a statement of something which is true. It is a statement of fact because it is a statement of something which is true.

6. The sixth example is a more complex one. It is a sentence which is a statement of fact. It is a statement of fact because it is a statement of something which is true. It is a statement of fact because it is a statement of something which is true.

7. The seventh example is a more complex one. It is a sentence which is a statement of fact. It is a statement of fact because it is a statement of something which is true. It is a statement of fact because it is a statement of something which is true.

8. The eighth example is a more complex one. It is a sentence which is a statement of fact. It is a statement of fact because it is a statement of something which is true. It is a statement of fact because it is a statement of something which is true.

9. The ninth example is a more complex one. It is a sentence which is a statement of fact. It is a statement of fact because it is a statement of something which is true. It is a statement of fact because it is a statement of something which is true.

10. The tenth example is a more complex one. It is a sentence which is a statement of fact. It is a statement of fact because it is a statement of something which is true. It is a statement of fact because it is a statement of something which is true.

C. United States Mine Warfare Experience in the
Pacific During World War II and Korea

1. The United States World War II Mine
Blockade of Japan

When one reflects on the most decisive of the U.S. military campaigns conducted against Japan during World War II, one usually envisions either those highly publicized air and naval battles such as the Battles of Coral Sea and Midway, or the awesome specter of those atomic weapons which were unceremoniously used to annihilate much of the population of Nagasaki and Hiroshima. However, it was neither the decisive naval battles in the Pacific nor the spectacular atomic weapons employed against Japan's industrial cities which completely assured Japan's World War II defeat. For in the words of naval historian Lieutenant Commander Arnold S. Lott, ⁸⁹

"[d]efeat, when Japan admitted the fact, was a slow creeping process which began with [the] blockade of her distant sea lanes and was completed when virtual destruction of seaborne commerce reduced her to economic, industrial and personal starvation."⁹⁰

The effectiveness of the U.S. Pacific blockade was also apparent to Japan's industrialists such as Takashi Komatsu of the Nippon Steel and Tube Company when he observed that:

It was not only the bombing of factories that defeated us, it was the blockade which deprived us of essential raw materials [such as] aluminum and coal. 91 (Emphasis original).

Japan, like most southeast Asian countries, was vulnerable to blockade since most of her shallow coastal waters were highly mineable while her population was almost entirely dependent for its manufacturing output upon imported raw materials. For example, Japan's war effort depended on the importation of 90 per cent of all its oil and 88 per cent of all iron in order to maintain its military production output. 92

The United States mine blockade of Japan's waterborne commerce first began in October, 1942 when the submarines Thresher and Gar planted 64 mines in Bangkok's coastal approaches. 93 In early 1943, Tenth Air Force B-24s began planting mines in the Japanese controlled Rangoon River. (It should be noted that all of these mining operations were unannounced and clandestine operations the existence of which remained a secret until the enemy confirmed his suspicions that his waters were being mined usually through the damage or destruction of one or more of his manned cargo vessels).

Air Force mining operations also included interdicting river traffic by using floating mines. In one phase of the Fourteenth Air Force's operation, traffic on the Yangtze River,

an important Japanese supply line for forces in Central China, was virtually halted through the use of floating mines. These "floaters" were designed to float with the current from between three to six feet beneath the surface during the entire length of the river. At the end of the three day armed period, these floating mines detonated themselves. 94

In 1944, both the Royal and the Australian Air Force began conducting long range mining raids. These 3,000 mile missions were systematically flown from bases in India and Ceylon in order that the harbors and waterways of Singapore could be mined. This increase in mining activity, principally through the utilization of magnetic type mines, slowed Japanese shipping operations to the point that cargo could no longer move from Bangkok to Singapore in iron ships, but instead had to be transferred to wooden vessels of 150 tons or less. The Japanese also attempted towing 500 ton barges from Singapore to Bangkok but were defeated in this effort when accoustic mines were used to augment those magnetic minefields already in place. Fuel for Bangkok was sent to French Indochina and then hauled overland. However, excessive demands placed on limited rail and road facilities, soon reduced efficiency by 50 per cent while merchant crews became increasingly reluctant to venture onto the inland and coastal rivers as well as to venture upon the surrounding high seas. 95

By the Spring of 1945, a parallel situation also prevailed upriver from Shanghai. No metal-hulled ship dared to sail upriver because of the presence of magnetic type mines. Thus river traffic was confined to small wooden vessels. As a result, the Japanese drive into South China slowed down, with troops and materiel being sent inland over inadequate rail systems.

During the same time period, the blockade of Japan's maritime "outer zone" had nearly been completed and the effects were being felt in the Japanese home islands. Prior to 1945, the principal hazard to Japan's maritime commerce was not so much aircraft mining activities but seaborne attacks and mining operations conducted by United States submarines. U.S. submarines went where Japanese vessels could also be found -- placing mines in areas of maximum shipping density. As a result, United States submarines claimed one ship casualty for every eight mines laid with only slight damage or destruction to U.S. submarine forces. ⁹⁶

However, the massive interdiction of all waterborne traffic headed for Japan's huge eastcoast ports and harbors did not reach its final degree of intensity until the Air Force launched its "OPERATION STARVATION" ⁹⁷ on March 27, 1945. While the title of OPERATION STARVATION was chosen during a period when "World public opinion" for the selection of such descriptive nomenclature was of only minimal significance, the effects of this total industrial blockade, even though it meant severe deprivation of fuel, food and clothing for Japan's population was,

in reality, the very instrumentality which convinced the Japanese that their cause was now hopeless and which therefore mandated a quick and humane surrender.

Hisanobu Terai, the President of NYK, then Japan's largest shipping line blamed food and raw material shortages for Japan's defeat and claimed, somewhat inaccurately, that in the last few months of the war, "proportions of shipping sunk were 1 by sub, 6 by bombs, [and] 12 by mines. ⁹⁸ While these proportions are not correct, the statement gives some indication of the relative magnitude of the threat to Japan's waterborne commerce which Japanese shipping interests attributed to the U.S. mining blockade.

In remarking on the effectiveness of the U.S. mine blockade, Captain Kyuzo Tamura, of the Imperial Japanese Navy, claimed that at least 20,000 men and 349 minesweepers were kept busy in an attempt to keep Japan's sea lanes and harbors open during the U.S. blockade. Losses in Japan's minesweeper fleet were extremely heavy with only one in four of these vessels surviving Japan's minesweeping operations. ⁹⁹ Captain Tamura told post-war interrogators that "the result of the B-29 mining was so effective against shipping that it eventually starved the country. I think you probably could have shortened the war by beginning [the mining] earlier." ¹⁰⁰ So intense had become the fifth and final stage of OPERATION STARVATION (9 July to 15 August) that 66 Japanese ships were sunk during a 36 day period in the

U.S. - Japan - 1960

[illegible]

Shimonoseki Straits alone. ¹⁰¹ Of Japan's 22 major merchant shipyards, all but three were rendered useless due to mines. ¹⁰² Acute shortages of coal, oil, salt and food nearly wiped out the remaining operative portions of Japan's industry which had survived the U.S. bombing raids of the Japanese Islands. ¹⁰³ Despite modest B-29 losses, over 12,135 mines were sown in Empire waters alone during the four month period in which OPERATION STARVATION was conducted. ¹⁰⁴ This vast aerial mining effort represented an expenditure of only 5.7 per cent of the Twenty-first Bomber Command's resources. The Twenty-first Bomber Command sank or damaged 606 ships totaling 1,251,256 tons. Against a total loss during OPERATION STARVATION of 670 Japanese ships, only 15 U.S. B-29s were lost or destroyed. This meant that for each 45 Japanese ships sunk by mines laid by B-29 aircraft, only one U.S. B-29 aircraft was sacrificed. ¹⁰⁵ By any measurement of effectiveness, the ratio of the losses of ships and the curtailment of Japanese imports including weapons and strategic materiel when compared to the losses of U.S. aircraft, clearly justified the U.S. mining blockade from an economy of force standpoint alone.

Through competent planning by the Navy and effective implementation by the Air Force, OPERATION STARVATION, regardless of the Draconian title used to describe it, significantly reduced Japan's capacity to wage its offensive operations.

[illegible]

The cumulative effect of the U.S. blockade and mining operation was to materially reduce the time for the U.S. to win the war and to eliminate the need for the United States to conduct massive invasion operations in the Japanese mainland.

Had the above mining operation commenced in January, 1945 as the United States Navy had recommended, the increased attrition of enemy merchant shipping might have significantly reduced Japan's resistance by the time the Okinawa assault had arrived. Almost certainly, the increase in shipping losses suffered by the Japanese plus the drastic reduction of imports to Japan, would have brought the Japanese, even before the first atomic test bomb was exploded at Alamogordo, N.M., to negotiations which might have prevented the tragic effects of Hiroshima and Nagasaki. 106

2. The United States Mine Warfare Experience in Korea: The Lesson of the Wonsan Invasion

During the 1950 Korean War, Russian manufactured sea mines were supplied to North Korea for defensive coastal emplacement against U.S. invasion forces at Wonsan, Korea. Russia avoided a direct confrontation with the United Nations forces and decided instead to content itself with merely supplying mine warfare technicians and materiel which meant in effect that Russia was attempting to fight the U.S. invasion fleet at Wonsan by proxy.¹⁰⁷

Initially, the Soviet mining effort in North Korea was probably intended to keep the United Nations ships out of North Korean coastal waters thereby hampering U.N. offensive capabilities. However, since the bulk of the U.N.'s naval force was comprised of ships of the United States Navy, the Korean war also provided the Soviet Navy with an ideal opportunity to test the U.S. Navy's ability, as of 1950, to cope with Russian mine warfare technology.¹⁰⁸ In addition, the Korean peninsula was almost ideally suited for an experiment in defensive naval mine warfare since most of its coastal waters were shallow and muddy thereby offering optimum in laying and concealment conditions.

Early in September 1950, U.N. ships and aircraft sighted mines in the Yellow Sea on 54 separate occasions. Worse yet,

more than 25 of these mines were of the floating contact variety and had been sighted on the surface in the high seas around the Korean Peninsula. 109 These "drifter" type mines were assumed to have become detached from their moorings and had therefore floated to the ocean surface. Whether the omission of self-scuttling devices on these Soviet built mines was intentionally planned for operational purposes or whether the demands of economy or a crash production schedule resulted in the elimination of this required self-destruction device could not be positively ascertained.

Article 1 of the Hague Convention of 1907 forbids nations "[t]o lay anchored submarine mines which do not become harmless as soon as they have broken loose from their moorings." 110 Since this convention was principally the result of the neutral trading nations, at that time, attempting to protect their own commercial maritime interests, it could be argued that the treaty provision requiring that contact mines once having broken their moorings must detonate themselves is inapplicable to a wartime situation where no "neutral" traffic can be found on the surrounding high seas and the defending coastal nation's waters are controlled by hostile naval forces. In any case, since Russia and North Korea were not signatories to Hague Convention VIII (1907) relative to the laying of automatic submarine contact mines, it could be argued that the two

more than 25 of these ships were of the licensed country
variety and had been listed on the register in the 1930s and
around the 1940s. The 1940s, 1950s, 1960s, 1970s, 1980s, 1990s
were assumed to have been licensed from their country of origin
and therefore listed on the open register. Under the 1990s
and of self-licensed ships or those listed in the 1990s was
intentionally planned for registration purposes in 1990. The
demand of economy or a small number of ships was limited to
the elimination of this category self-licensed ships could
not be positively recorded.

Article I of the 1990 Convention of 1990 states that
"[t]o lay another national ship which is not a national ship
as soon as they have been listed from their country."
Since this convention was originally the result of the 1990
treaty which, at that time, provided for national ships and
commercial ships. It would be agreed that the
treaty provision regarding the 1990s was not laying
broken their working and national ships. It would be agreed
to a certain extent when the 1990s were not listed
on the surrounding ship case and the 1990s were not listed
ships are controlled by their own navy forces. In 1990, the
also 1990s and 1990s were not registered in 1990.
Convention VII (1990) relative to the 1990s of 1990s
national country ships, it would be agreed that the 1990

nations were neither bound by the Convention's provisions 111 nor the customary practices of international law. 112 However, despite the existence of a significant number of "floating" type mines which had been observed drifting in North Korean coastal waters, the primary threat to U.N. naval forces at Wonsan was not the existence of floating contact mines but massive North Korean laid mine fields in which the Communists had sown an estimated 3000 moored contact and pressure type mines. 113

To counteract the presence of this Communist mine threat, the exact presence and location of which was merely suspected but not actually confirmed by the United States amphibious forces, the U.S. Navy was able to deploy a small force of only six minesweepers. 114 This diminutive minesweeper force, which was manned principally by reserve personnel, represented the remnants of a once sizeable reservoir of of highly trained talent which had dwindled almost to the vanishing point between 1945 and 1950.

In 1947, the headquarters of the United States Mine Force, Pacific Fleet was abolished and severe budgetary cuts as well as the general military de-emphasis of mine warfare had reduced the U.S. Navy's World War II Pacific minesweeping fleet from its former level of 525 ships to a mere handful of 22 vessels for the entire Far East. 115 This extremely small minesweeping force, which was assigned the task of sweeping the approaches

of Wonsan harbor for an entire U.S. amphibious landing force, was allowed only five days in which to complete an extremely hazardous operation the extent and complexity of which, at the time of its inception, was absolutely unknown. (As a result of the Wonsan operation, the status, composition and readiness of the U.S. Navy's mine warfare forces were subject to in depth review and re-evaluation during the post Korean War period).

The attempt to clear Wonsan Harbor of mines commenced on October 10, 1950 and ended fifteen days later when Wonsan channel had been swept clear. However, the operation took three times longer than initially planned. During the fifteen day period that the tiny minesweeper force of six ships was attempting to clear Wonsan Channel, a jam-packed naval amphibious task force carrying most of the First Marine Division repeatedly steamed southward for twelve hours only to double back over the same course for over a week in what the Marines sarcastically called "Operation Yo-Yo" 116

The herculean U.S. mine sweeping effort which culminated in an unopposed landing on October 25th, was completed only after an expenditure of thousands of manhours of planning and preparation and after the sinking of two U.S. minesweepers known as the Pirate and the Fledge. 117

Even more astonishing was the revelation that the entire

Wonsan amphibious landing force which was unable to carry out its objective for a period of ten days, was absolutely stymied due to the efforts of a relatively small force of North Korean trainees who were expertly supervised and assisted by Russian naval and mine warfare personnel. Post-Wonsan assault prisoner interrogations revealed that over 3000 mines were laid by the North Koreans using simple wooden barges of the type normally used in river and coastal traffic. ¹¹⁸ These craft were fitted to carry approximately ten to fifteen mines. In some instances, North Korean coastal fishing vessels also participated in Communist mine laying activities. ¹¹⁹ The mines were manually loaded on wooden barges and were then towed to a pre-determined location where, on signal, they were rolled off the stern of the barges at intervals of from one to one and one-half minutes. While these North Korean mining techniques may have appeared primitive by U.S. standards, they proved to be highly effective judging from the results of the excellent mine field patterns which were laid in close integration with Wonsan's coastal defenses. ¹²⁰

Two major lessons were learned from the serious delays which the Communist mine fields created for the United States Navy. First, despite the ability to sink an enemy's fleet and cope with his submarines while simultaneously conducting offensive air and naval support missions for friendly troops ashore, it remains militarily unacceptable if U.S. troops and essential

supplies cannot be moved and landed ashore when and where they are needed because the Navy has been denied, due to the presence of enemy mine fields, the effective control of the sea and, Second, in order for the U.S. Navy to remain prepared to cope with either an offensive or defensive enemy mine warfare threat, no so-called "subsidiary" branch of the Naval service, such as occurred during 1945 to 1950 to U.S. mine warfare, should ever be neglected or relegated to such a minor role in the future. 121

D. Circumstances Leading to the Commencement
of Naval Interdiction Operations of North
Vietnamese Harbors

1. Presidential Announcement Describing the
Need to Mine North Vietnamese Harbors so
as to Interdict Seaborne Commerce

At the very beginning of his May 8, 1972 radio and television address, President Nixon told his listening audience that in early April, 1972 North Vietnamese Communist forces had "launched [a massive] invasion that was made possible by tanks, artillery, and other advanced offensive weapons supplied to Hanoi by the Soviet Union and other Communist nations." 122 After reviewing all of the measures which he had previously directed Dr. Henry A. Kissinger [Assistant to the President for National Security Affairs] and Ambassador William Porter [Chief United States Negotiator at the Paris peace talks] to undertake in an effort to achieve a peaceful settlement, the President said that the North Vietnamese had flatly refused to consider any of these new proposals.¹²³ Instead of being cooperative, the President said the North Vietnamese had met each of his offers with insolence and insult. The President went on to observe that:

In the 2 weeks alone since I offered to resume negotiations, Hanoi has launched three new military offensives in South Vietnam. In those 2 weeks the risk that a Communist government may be imposed on 17 million people of South Vietnam has increased, and the Communist offensive has now reached the point that it gravely threatens the lives of 60,000 American troops who are still in Vietnam.

There are only two issues left for us in this war:

First, in the face of a massive invasion do we stand by, jeopardize the lives of 60,000 Americans, and leave the South Vietnamese to a long night of terror? This will not happen. We shall do whatever is required to safeguard American lives and American honor.

Second, in the face of complete intransigence at the conference table do we join with our enemy to install a Communist government in South Vietnam? This, too, will not happen. We will not cross the line from generosity to treachery." 124

The President then went on to outline three "hard choices" which confronted him: (1) "immediate withdrawal of all American forces, (2) continued attempts at negotiation, or (3) decisive military action to end the war." 125

After reviewing his available options, the President concluded that:

There is only one way to stop the killing [and] that is to keep the weapons of war out of the hands of the international outlaws of North Vietnam. 126

The President ended this phase of his presentation with the observation that when the enemy abandons all restraint, throws his entire army into battle while refusing to negotiate, we simply face a new situation. Under such circumstances, with 60,000 American servicemen threatened, any President who failed to act decisively would have betrayed the trust of his country and betrayed the cause of world peace. 127

The President went on to state that he had concluded that Hanoi must be denied the weapons and supplies it needs to continue its aggression and, therefore, in full coordination with the Republic of [South] Vietnam, he had ordered the following measures implemented:

All entrances to North Vietnamese ports will be mined to prevent access to these ports and North Vietnamese naval operations from these ports.

United States forces have been directed to take appropriate measures within the internal and claimed territorial waters of North Vietnam to interdict the delivery of any supplies.

Rail and all other communications will be cut off to the maximum extent possible.

Air and naval strikes against military targets in North Vietnam will continue. 128

President Nixon stressed that the above actions which he had ordered taken were not directed against "any other nation."

Countries with ships presently in North Vietnamese ports had already been notified that these ships had "three daylight periods to leave in safety." After that time, the President said, the mines will have become active and any ships attempting to leave or enter the mined ports will do so "at their own risk."

Finally, the President set forth two conditions which had to be met in order for him to order a cessation of the interdiction measures which he had ordered. First, all of the United States prisoners of war had to be returned; and second, there must be an internationally supervised cease-fire throughout Indochina. Once the prisoners were released and once the internationally supervised cease fire had begun, the President said, then all acts of force throughout Indochina would be terminated and at that time, all American forces would be withdrawn within four months time. 129

2. Justification Advanced by U.N. Ambassador
George H. Bush in Communicating the U.S.
Position to the United Nations

In his letter to the President of the Security Council of May 8, 1972, U.S. representative George H. Bush wrote that the

Communities with ethnic diversity in South Vietnamese towns
but already have settled and there will be "little doubt"
periods to leave in safety. "After that time, the remaining
will, the more will have become better and the more will
and as long as there is no more war in the South and
then."

Finally, the President has said the conditions under
to be met in order for him to accept a cessation of the war
ethnic minorities who he had ordered. First all of the
United States history of war had to be removed, the second
there would be an international commission to investigate
our situation. Once the President had ordered and since the
internationally recognized power had been, the President
said, then all acts of force between Indonesia would be
forbidden and at that time, all American forces would be
withdrawn within four months time. 173

1. Investigation conducted by U.S. Ambassador
George H. Bush in Indonesia, July
Position in the United States

In his letter to the President of the Security Council of
May 5, 1973, U.S. Representative George H. Bush stated that the

President of the United States had directed United States forces in Southeast Asia, in conjunction with forces of the Republic of Vietnam, to mine the entrances to the ports of North Vietnam in an effort to prevent the delivery of seaborne supplies. ¹³⁰ Ambassador Bush's letter asserted that the massive invasion across the demilitarized zone and the continuing aggression by the forces of North Vietnam against the people and territory of the Republic of Vietnam had created unprecedented dangers to the country, its people and the forces of the Republic of Vietnam and those U.S. forces which still remained in South Vietnam. As a result of this North Vietnamese aggression, the Ambassador said that the U.S. had commenced interdiction activities of all North Vietnam bound seaborne supplies as measures of collective self-defense. ¹³¹ These collective self-defense measures were being reported to the United Nations Security Council as required by Article 51 of the United Nations Charter. ¹³²

The Ambassador's letter noted that since a major portion of the supplies through which the invasion of South Vietnam was being supported entered North Vietnam by sea, it was essential that further delivery of seaborne supplies be completely halted. After restating the interdiction measures which President Nixon had ordered as a minimum necessary to meet the North Vietnamese threat, the Ambassador expressed the belief that these measures were restricted both in extent and purpose and were therefore

President of the United States and the United States

forces in Vietnam, it is recommended that the

President of the United States, in order to maintain the peace in

Vietnam, it is recommended that the President of the United States

supply the necessary funds to the United States for the necessary

investments in the United States and the United States

and the United States and the United States

President of the United States and the United States

President of the United States and the United States

of Vietnam and the United States and the United States

Vietnam, it is recommended that the President of the United States

President of the United States and the United States

President of the United States and the United States

collective self-defense, it is recommended that the President of the United States

President of the United States and the United States

President of the United States and the United States

President of the United States and the United States

the President of the United States and the United States

being suggested that the President of the United States

that further delivery of weapons and supplies is necessary

After receiving the information that the President of the United States

had ordered a military operation in the United States

that, the President of the United States and the United States

were restricted both in the extent of their operations and in the

completely reasonable. The letter also noted that in addition to general notices being given of the measures taken against North Vietnam, the naval forces of the United States and the Republic of Vietnam would also notify any vessel approaching the mined internal and claimed territorial waters of North Vietnam of the existence of these mined waters.

3. Amplifying Remarks Made by Presidential
Adviser, Dr. Henry A. Kissinger

During his preliminary remarks made on May 9, 1972 at a press conference given at the White House, Presidential Adviser Henry A. Kissinger outlined the steps which he had taken in early 1972 on behalf of the United States to achieve meaningful negotiations with the North Vietnamese Government.¹³³ Dr. Kissinger indicated that in March of 1972, United States intelligence sources showed that the North Vietnamese, while steadfastly refusing to resume negotiations, were rapidly building up their forces and that by Easter Sunday (1972), the United States had become aware of the beginning but not the size and scope of a new North Vietnamese major offensive. Dr. Kissinger said that since the United States was then committed to trying to cultivate its improved relations with Peking and Moscow, the United States did not wish to take any immediate action in response to this new North Vietnamese military offensive.

completely uncorrelated. The latter also noted that it was difficult to generalise because of the varying ethnic background of the people. The overall picture of the United States was that of a country which was also a very mixed society. The mixed blood and ethnic background of the people of the United States was also noted.

... during the preliminary research work on the 1977-78
... a series of studies were carried out at the White House, Washington
... Robert Kennedy Jr. himself conducted the study which was
... from the early 1970s to the end of the 1970s. The study was
... conducted in cooperation with the World Health Organization (WHO)
... Dr. Robert Kennedy Jr. in 1977. The study was
... conducted in cooperation with the World Health Organization (WHO)
... Kennedy Jr. himself conducted the study which was
... from the early 1970s to the end of the 1970s. The study was
... conducted in cooperation with the World Health Organization (WHO)
... Dr. Robert Kennedy Jr. in 1977. The study was
... conducted in cooperation with the World Health Organization (WHO)

However, Dr. Kissinger also noted that during his recent visit to Moscow in the Spring of 1972, "We pointed out to the Soviet leaders the extraordinary complexity that was posed for us by a massive invasion of the entire North Vietnamese field army against South Vietnam, an invasion that if it achieved its objective was bound to jeopardize the security of 60,000 Americans, and the impact that such developments had to have on our attempts to move forward on a broad front."¹³⁴ Dr. Kissinger said that the Soviet leaders felt every effort should be made to resume negotiations; and on this basis the U.S. proposed a return to plenary sessions provided the U.S. was given firm assurance that a productive private meeting would quickly follow.

Unfortunately, no substantive discussions with the North Vietnamese were to be immediately forthcoming. When a meeting between the U.S. and the North Vietnamese negotiators was finally arranged after six months of attempting to set up such a meeting, the North Vietnamese simply read a previously published statement which, according to Dr. Kissinger, could have been "clipped from a newspaper and sent to us in the mail."¹³⁵ Dr. Kissinger concluded this phase of his press conference by saying that:

No one can believe that 2 weeks before a summit meeting that it had taken us 2 years to set up, the President would lightly engage in the sort of decisions he had taken.

However, Dr. Hissinger did not bring his book

back to work in the winter of 1977. He visited me in the

winter before the anniversary of the war and

for us by a massive transfer of the war's history

to his new book, "The War in Vietnam" (1978).

Another of his efforts was to bring the war's history

to the public, and the book, "The War in Vietnam"

had to have an end result of a book that

Dr. Hissinger said that the book would be a book that

should be seen as a book that would be a book that

Dr. H. provided a book to the public that would be a book that

was given the book that a book that would be a book that

would be a book that

unfortunately, no other book that would be a book that

Vietnam was to be a book that would be a book that

between the U.S. and the U.S. Vietnam was a book that

finally came to the public in a book that would be a book that

a book that was a book that would be a book that

book that was a book that would be a book that

book that was a book that would be a book that

Dr. Hissinger provided the book of his book that would be a book that

saying that

so one can believe that I have been a book that

that is the book that I have been a book that

would likely be a book that would be a book that

We were confronted with the fact that an opponent was insisting on continuing an all-out military offensive which would stop only on terms that no American President can be asked to accept. And this is why, with enormous pain and great reluctance, this administration was forced into those [interdiction] decisions.

For 2 years we have been engaged in negotiations on a broad range of issues with the Soviet Union. We are on the verge not just of success in this or that negotiation but of what could be a new relationship of benefit to all of mankind -- a new relationship in which, on both sides, whenever there is a danger of crisis, there will be enough people who have a commitment to constructive programs so that they could exercise restraining influences. But in order for such a policy to succeed, it cannot be accepted that one country can be oblivious to the impact on another of the actions of its friends, particularly when those friends are armed with the weapons of this country. 137

4. Remarks of Deputy Secretary of Defense

Kenneth Rush

In an early morning televised appearance ¹³⁸ on the day after President Nixin's May 8th mining-interdiction announcement, Deputy Secretary of Defense Kenneth Rush made the following distinction between the interdiction of supplies bound for North Vietnam and the interception of foreign ships bound for North Vietnamese ports:

We are not stopping ships. We are saying that we are preventing the delivery of supplies to North Vietnam. We have laid mines and no ship need to hit those mines.

When asked a question by Pentagon Correspondent Robert Goralski pertaining to the possibility if a Soviet vessel going within North Vietnamese territorial waters, the Secretary responded that while there was no decision to bomb such a ship, a decision had been made to prevent the offloaded supplies from that ship from ever reaching the shore. When asked how North Vietnamese bound supplies could be prevented from reaching shore, Secretary Rush responded as follows:

There are many ways. One of them is, of course, that the ship itself would be taking a very grave risk if it came within the 12-mile limit and hit a mine. Another is, of course, once the ship is unloaded and if you have lightering (unloading of a ship or a barge for transport of supplies ashore), we, of course could subject the lightering ships to bombing. We could [also] bomb [them] once they reach shore. We have alternatives in that regard, but the measures we will take will depend upon the circumstances.

When asked how great a risk the United States had assumed by taking such an apparent "escalatory move", Secretary Rush answered:

That, too depends on one's point of view. We feel that the way to bring about peace, to bring about a ceasefire, is to prevent the munitions of war and the supplies needed for this invasion from reaching the invaders. We are not stopping ships on the high seas. We are not even bombing ships anywhere as of now, and we've made no decision to bomb at all. So

then take a position in the same position as before.

Complaints received in the past have been of a general nature.

going which shows a tendency towards a more general nature.

repeated that while there has been no change in the nature of the

a decision has been made to remove the children from the

that side from the same side of the river. The same decision

Victims have been advised that it is necessary to be careful

about the same side of the river as follows:

State and many other. The same side of the river as before.

the side of the river as before. The same side of the river as before.

it was stated that the same side of the river as before.

Another side of the river as before. The same side of the river as before.

it was stated that the same side of the river as before.

for the same side of the river as before. The same side of the river as before.

subject the same side of the river as before. The same side of the river as before.

book (and) the same side of the river as before. The same side of the river as before.

is that the same side of the river as before. The same side of the river as before.

and the same side of the river as before. The same side of the river as before.

the same side of the river as before. The same side of the river as before.

by the same side of the river as before. The same side of the river as before.

the same side of the river as before.

the same side of the river as before. The same side of the river as before.

that the same side of the river as before. The same side of the river as before.

the same side of the river as before. The same side of the river as before.

the same side of the river as before. The same side of the river as before.

the same side of the river as before. The same side of the river as before.

the same side of the river as before. The same side of the river as before.

the same side of the river as before. The same side of the river as before.

the same side of the river as before. The same side of the river as before.

the same side of the river as before. The same side of the river as before.

the same side of the river as before. The same side of the river as before.

the same side of the river as before. The same side of the river as before.

the same side of the river as before. The same side of the river as before.

the same side of the river as before. The same side of the river as before.

there need be no escalation whatever as between us and any other countries and there should be a deescalation with regard to the North Vietnamese if they don't have the munitions and the supplies and are unable to carry on this massive invasion of the South.

Mr. Goralski thereafter asked Secretary Rush a question which was perhaps one of the most pertinent inquiry of the interview and which pertained to the selectivity of the U.S. mining-interdiction and its effects on freedom of navigation on the high seas:

Mr. Goralski: Mr. Secretary, a mine can't discriminate between a Soviet ship hauling in SAM missiles or tanks and a Japanese [ship] carrying in foodstuffs. Aren't you, in effect, saying that you don't want anybody to trade with North Vietnam now because if they do, if they bring in their equipment by sea, they risk the possibility of those ships [hitting a mine and being] lost?

Secretary Rush: Yes, we're saying that we cannot distinguish between ships carrying munitions or war and ships that might be carrying just food. Therefore, we cannot allow any cargoes to reach shore. (Emphasis added).

During the concluding segment of his interview, the Secretary was asked what was perhaps the most probing question presented to him during the course of the interview. In this question, Secretary Rush was asked by Mr. Goralski if, notwithstanding the recent favorable results achieved by the United States and the Soviet Union on such matters as the

Four Power Agreement on Berlin and the great progress made on the SALT negotiations, whether it was "expecting an awful lot from Moscow" for them to "just sit back and tell the North Vietnamese we're not going to help you any more?

To this question Secretary Rush responded as follows:

A war is a very serious calculated risk in any event. There was a serious calculated risk when the arms supplied primarily by the Soviets, massive arms, North Vietnam moved virtually her entire forces into South Vietnam in this massive invasion. This involved very serious risks which the President pointed out. The North Vietnamese are equipped with the very latest in missiles, in SAMs, in artillery and tanks, in trucks and all those things, everything needed for a massive invasion by a military state of a neighbor. This involves military risks. There are also, obviously, risks involved in attempting to prevent this invasion from going forward successfully, by preventing supplies from reaching the armed forces of that invading country, and we think those risks are acceptable. (Emphasis added).

5. Explanation of United States Activities
Presented by Secretary of Defense
Melvin Laird

On the morning following Deputy Secretary of Defense Rush's television appearance, Secretary of Defense Melvin Laird was asked during a Pentagon press conference ¹³⁹ what the United States would do if the Soviet Union attempted to remove any of the mines which the United States had laid. To this question the Secretary responded, "First, we will take all steps that are necessary in order to maintain an adequate mining operation.

On the morning following Tuesday, January 12, 1960, the writer telephoned the Secretary of Defense and discussed the matter with him. The Secretary of Defense stated that he was not sure of the exact date of the meeting but that it was probably in the latter part of 1959. He stated that he was not sure of the exact date of the meeting but that it was probably in the latter part of 1959. He stated that he was not sure of the exact date of the meeting but that it was probably in the latter part of 1959.

As you know, mines are a passive weapon. No one has to get involved with a mine. That decision is made not by us, but is made by those people that confront the mines."

When asked to explain the reason the administration chose not to call the mining operation a "blockade" and why Senate Republican Leader Hugh Scott, (R-Pa.) stated "that the term 'blockade' is a legal term which has a lot of support in international law," Secretary Laird replied as follows:

Of course, this is not in the terms that you refer to it, in Senator Scott's terms, and you quote Senator Scott, a blockade in the international sense, that we are challenging ships beyond the territorial waters of North Vietnam. We are merely giving notification to all shipping that the harbors of North Vietnam have been mined, and we have notified the entire world and we have notified the United Nations that we will not permit the landing of supplies in North Vietnam

This is a much different type of action than the international blockade to which you refer that applies on the high seas beyond the territorial waters of a given country so there is difference. 140
(Emphasis added).

When asked whether the mining and maritime interference with seaborne shipping deliveries might be considered as a warlike act against other nation's shipping interests without the existence of the required Declaration of War, the Secretary responded:

As you know, since the 1960s, the world has been
involved with a crisis. This crisis is not only a
crisis in the sense of the word, but also a crisis in the
sense of the word.

When we look at the world, we see a world that is
changing and in fact the world is changing. It is not
the same world as it was. It is a world that is
in a state of flux. It is a world that is in a state of
flux.

Of course, this is not the only way to look at the world.
It is not the only way to look at the world. It is not
the only way to look at the world. It is not the only way
to look at the world. It is not the only way to look at
the world. It is not the only way to look at the world.

This is a very different way of looking at the world.
It is a very different way of looking at the world. It is
a very different way of looking at the world. It is a very
different way of looking at the world. It is a very different
way of looking at the world.

When we look at the world, we see a world that is
changing and in fact the world is changing. It is not
the same world as it was. It is a world that is
in a state of flux. It is a world that is in a state of
flux.

When we look at the world, we see a world that is
changing and in fact the world is changing. It is not
the same world as it was. It is a world that is
in a state of flux. It is a world that is in a state of
flux.

The situation is such . . . that mines have been used by the enemy in the South and in the tributaries and in the rivers in the South over a period of time. We have had damage done to [our] ships from the mines that have been laid by the North Vietnamese. These have been in most cases Soviet mines that have been placed in those particular entrances to river facilities and in other areas in the South. I think it is important to point out that mines have [previously] been used by the enemy in South Vietnam. 141

Finally, in response to the question as to whether any flag ship belonging to a country other than North Vietnam would be attacked if it attempted to land cargo on the shore, the Secretary of Defense reiterated the order previously announced by President Nixon that the United States policy "is to stop the delivery to the North Vietnamese of these supplies, and we will take those actions that are necessary to stop that delivery." 142 (Emphasis added).

E. Evaluation of Strategic Planning, Implementation and Policy Considerations Related to United States Naval Interdiction Activities

The sudden developments leading up to the President's mining announcement of May 8, 1972 appears to have been due, in large part, to the rapid, clandestine and massive North Vietnamese buildup which apparently surprised U.S. intelligence experts by its timing and its direction. 143 One intelligence

The attention is drawn to the fact that the
and by the Army in the month of May 1953
and in the river in the month of May 1953
to have been built by the Army in the month
that have been built by the Army in the month
have been built by the Army in the month
placed in the month of May 1953
later and in the month of May 1953
placed in the month of May 1953
later and in the month of May 1953
placed in the month of May 1953
later and in the month of May 1953

It is noted that the Army in the month of May 1953
and in the river in the month of May 1953
to have been built by the Army in the month
that have been built by the Army in the month
have been built by the Army in the month
placed in the month of May 1953
later and in the month of May 1953
placed in the month of May 1953
later and in the month of May 1953
placed in the month of May 1953
later and in the month of May 1953
placed in the month of May 1953
later and in the month of May 1953

The attention is drawn to the fact that the
and by the Army in the month of May 1953
and in the river in the month of May 1953
to have been built by the Army in the month
that have been built by the Army in the month
have been built by the Army in the month
placed in the month of May 1953
later and in the month of May 1953
placed in the month of May 1953
later and in the month of May 1953
placed in the month of May 1953
later and in the month of May 1953
placed in the month of May 1953
later and in the month of May 1953

The attention is drawn to the fact that the
and by the Army in the month of May 1953
and in the river in the month of May 1953
to have been built by the Army in the month
that have been built by the Army in the month
have been built by the Army in the month
placed in the month of May 1953
later and in the month of May 1953
placed in the month of May 1953
later and in the month of May 1953
placed in the month of May 1953
later and in the month of May 1953
placed in the month of May 1953
later and in the month of May 1953

source reported that although "we saw the [Communist] build-up [coming], we could not tell when or where he'd strike." 144

During their assault in the Central Highlands, the North Vietnamese gained a major tactical surprise - - and almost four or five days of virtually unimpeded advance leading to the seizure of Quantri, by hitting when and where it was least expected. After the North Vietnamese offensive had been launched, U.S. intelligence sources acknowledged that they had not suspected that the North Vietnamese would take the "short route" down Coastal Highway 1. One U.S. intelligence source reported that "[t]he surprise was that for the first time in 18 years, the Communists stopped the pretense of 'infiltration' caused by a 'peoples' civil war and [openly] went down Coastal Highway 1." 145 The sudden appearance of thirty North Vietnamese tanks, thought to be disassembled and brought south by truck or river boat, also produced instant and extreme psychological shock to the South Vietnamese defending forces.

These sudden and successful advances by the North Vietnamese resulted in severe military losses for the South Vietnamese including a major debacle where one South Vietnamese General, Brigadier General Vu Van Giai, actually abandoned his command post at Quantri when his position wasn't even under threat of ground attack. 146

Such demonstrated weakness on the part of some South Vietnamese military commanders apparently caused President Nixon to include a statement in his May 8th presentation which was addressed "to the people of South Vietnam." In this segment of his speech, the President said:

You shall continue to have our firm support in your resistance against aggression. It is your spirit that will determine the outcome of the battle. It is your will that will shape the future of the country." 147

Following the President's urging of South Vietnamese leaders to get tough and show more spirit and leadership, South Vietnamese President Nguyen Van Thieu imposed martial law in a move to heighten public awareness of the country's critical military situation. 148

Thus, the President of the United States was not only faced with a massive movement of North Vietnamese troops and heavy equipment into the South, but he was also confronted with the spectre of a rapid deterioration of South Vietnamese military leadership and battlefield morale. The possibility of a catastrophic collapse of South Vietnam's military posture which might have subsequently lead to an election year debacle after three and one-half years of continued promotion of the Administration's Vietnamization program, was likely to have been one of the principal considerations which influenced President Nixon to order North Vietnam's ports and harbors mined.

and the Commission's findings are set out in the report.

The Commission's findings are set out in the report.

It is to be noted that the Commission's findings are set out in the report.

The Commission's findings are set out in the report.

The Commission's findings are set out in the report.

The Commission's findings are set out in the report.

The Commission's findings are set out in the report.

The Commission's findings are set out in the report.

The Commission's findings are set out in the report.

The Commission's findings are set out in the report.

The Commission's findings are set out in the report.

The Commission's findings are set out in the report.

The Commission's findings are set out in the report.

The Commission's findings are set out in the report.

The Commission's findings are set out in the report.

The Commission's findings are set out in the report.

The Commission's findings are set out in the report.

The Commission's findings are set out in the report.

The Commission's findings are set out in the report.

The Commission's findings are set out in the report.

The Commission's findings are set out in the report.

The Commission's findings are set out in the report.

The President's May 8th decision to mine North Vietnamese waters also had to be carefully considered in light of his scheduled visit to the Soviet Union which would occur two weeks hence. (May 22, 1972).

In his May 8th address, the President made several pointed references to the Soviet Union, the most important of which is as follows:

I particularly direct my comments tonight to the Soviet Union. We respect the Soviet Union as a great power. We recognize the right of the Soviet Union to defend its interests when they are threatened. The Soviet Union in turn must recognize our right to defend our interests.

No Soviet soldiers are threatened in Vietnam. Sixty thousand Americans are threatened. We expect you to help your allies, and you cannot expect us to do other than to continue to help our allies. But let us, and let all great powers, help our allies only for the purpose of their defense, not for the purpose of launching invasions against their neighbors.

Otherwise the cause of peace, the cause in which we both have so great a stake, will be seriously jeopardized.

Our two nations have made significant progress in our negotiations in recent months. We are near major agreements on nuclear arms limitation, on trade, on a host of other issues.

Let us not slide back toward the dark shadows of a previous age. We do not ask you to sacrifice your principles, or your friends, but neither should you permit Hanoi's intransigence to blot out the prospects we together have so patiently prepared.

We, the United States and the Soviet Union, are on the threshold of a new relationship that can serve not only the interests of our two countries but the cause of world peace. We are prepared to continue to build this relationship. The responsibility is yours if we fail to do so. 149

reference to the United States. The same document is also in
in his own hands, and I believe will be sent to the
Hence, (May 22, 1951).

...the

At stake in this calculated gamble of Herculean proportions, was not only the possibility that the United States might provoke a major confrontation with the Soviets in Southeast Asia and in other parts of the World, but that the detente between the United States and the Soviet Union which had been so carefully cultivated after years of negotiations, was being threatened with total destruction.

In effect, the President's mining announcement required the Soviet Union to elect whether contrary to the interests of World stability, the Soviet Union would continue to provided the means to its remote and small ally to take over another small ally of the United States while both were engaged in fighting one another in the same distant and war torn land; or whether the Soviet Union would abide by these suggested and self-imposed rules of intervention which called for a military response by the superpowers only when the territorial interests considered vital to each were clearly and convincingly affected.

In taking this calculated risk, the President was relying heavily upon his judgment that the Soviet Union would not hastily react to the United States mining measures because (1) these measures did not, in themselves, constitute a threat to Soviet vessels on the high seas and were instead strictly limited to measures affecting North Vietnam's territorial waters, (2) because Moscow may have felt that it had been betrayed by Hanoi's

launching of its heavy offensive into South Vietnam after the Soviets had recommended ¹⁵⁰ that the tanks, artillery and other weapons which they had supplied the North Vietnamese should not be used until after all American forces had been withdrawn, rather than before President Nixon's visit to the Soviet Union had been completed, and (3) because a long sought stabilizing treaty in Central Europe, a highly desired agreement to limit the arms race between the super powers and an extremely generous arrangement for trade with access to American technology were all at stake for the Soviet Union if they chose to provoke a military confrontation over the President's mining measures. ¹⁵¹

Another major factor which weighed heavily when the President made his evaluation of the long range strategic effects associated with the commencement of his North Vietnamese mining measures was that the President could also take effective action against North Vietnam because the Russians and the Chinese, whose border confrontations had been steadily growing, had each considered their future links with the United States to be more important than their present commitments to Hanoi. On the other hand, the President had to consider whether his actions might stimulate latent competitive forces between the Soviets and the Chinese which could compel them to demonstrate to Hanoi and the Communist World the degree of individual commitment stemming from their own competitive version of Marxism.

...of the heavy offensive into Soviet Union after
the Soviet had recognized that the Soviet, military and
other weapons which they had supplied the Soviet Union
should not be used until after all American forces had been
withdrawn, rather than before President Truman's visit to the
Soviet Union had been completed, and (3) because a long security
stabilizing treaty in Central Europe, a highly desired agreement
to limit the arms race between the Soviet Union and its satellites
generous arrangement for trade with Soviet to Western Europe
and all at stake for the Soviet Union is now close to
providing a military confrontation over the President's claim
... ..

Another major factor which caused hostility from the
President was his revision of the long range strategic
alliance associated with the membership of his world war-
time allies and the fact that the President could also have
effective action against Soviet Union because the Russians and
the Chinese, whose better conditions had been steadily
growing, had not considered their future links with the United
States to be more important than their present commitments
to Russia. On the other hand, the President had to consider
whether his action would stimulate Soviet commissive forces
between the Soviets and the Chinese which would compel them to
demonstrate to Russia and the Communist world the degree of
individual commitment extending from their own commissive
... ..

Indeed, The New York Times reported that on May 17th, with only five days remaining before the arrival of President Nixon in Moscow, the Soviet media was conveying the impression that the American measures taken at Haiphong had fostered new collaboration between the Soviet Union and China. ¹⁵² Soviet insiders were reportedly telling friendly diplomats that the two feuding Communist powers were either about to sign or had already signed new agreements arranging for the shipment of Soviet war supplies for Hanoi across China to outflank the American attempt to choke off supplies by sea. However, the prevailing view, at that time, was that most of the Soviet publicity including private leaks, was being given for appearance sake only and did not portend any fundamental easing of tension between the Soviet Union and China. Indeed, the Soviet desire to upstage Peking coupled with an almost obsessive fear of unlimited United States-Chinese cooperation, was reckoned by Western diplomats as the principal factor for the Kremlin's decision not to cancel President Nixon's visit. ¹⁵³

Subsequently, a May 23rd report from Peking showed that China had, from the outset, balked at Russian requests that Soviet bloc freighters carrying supplies to North Vietnam be allowed to use Chinese ports. Instead, the Chinese merely agreed to increase Soviet bloc rail shipments through China proper. ¹⁵⁴ One diplomatic source reported that this Chinese refusal was coupled with a suggestion that the Soviets instead begin to attempt to clear the North Vietnamese ports and harbors

of mine fields. ¹⁵⁵ In addition, sources reported that while the Chinese rail system had geared up for a substantial increase on rail traffic caused by the requested Soviet accomodation, the goal of satisfying these increased Soviet cargo requirements when coupled with a five-fold increase in rail tonnage in order to compensate for the loss of sea routes, would be extremely difficult to achieve. ¹⁵⁶

Subsequently, a news report from Moscow dated June 18th, told of Soviet citizens being informed during political lectures that China had "categorically refused" to let Soviet ships unload supplies destined for North Vietnam at Chinese ports. ¹⁵⁷ (Lectures are a basic form of adult education in the Soviet Union). The lecturers told the Soviet public that immediately after the United States laid the mines along the North Vietnamese coast on May 8th, nine Soviet minesweepers set out toward North Vietnam from Vladivostok, Russia's naval base in the Sea of Japan. One reason these minesweepers were never used the Soviet audiences were told, was that the United States could have quickly replaced its mines as soon as they were swept.

Russian audiences were also told that China favored heating up the Indochina war in the Spring of 1972 because the Chinese hoped this might interfere with President Nixon's visit to the Soviet Union. However, it was acknowledged that the developments created by by Mr. Nixon's May 8th mining order severely complicated preparation for the May, 1972 summit and caused

of this kind, 300. In the case of the
the Chinese rail system the system of the
on rail traffic caused by the increased demand
the goal of increasing passenger service, however,
when coupled with a rise in the price of oil, it is
to compensate for the loss of revenue. Only in
difficult to achieve. 301

Consequently, a very small amount of
of the total Chinese rail income is used for
the Chinese rail system, 302. In the case of
which supplies the system for the purpose of
the system and a small amount of the income is
which the system will be able to handle. 303
which the system will be able to handle. 304
which the system will be able to handle. 305
which the system will be able to handle. 306
which the system will be able to handle. 307
which the system will be able to handle. 308
which the system will be able to handle. 309
which the system will be able to handle. 310
which the system will be able to handle. 311
which the system will be able to handle. 312
which the system will be able to handle. 313
which the system will be able to handle. 314
which the system will be able to handle. 315
which the system will be able to handle. 316
which the system will be able to handle. 317
which the system will be able to handle. 318
which the system will be able to handle. 319
which the system will be able to handle. 320

the Soviet Central Committee to reconsider the desirability of President Nixon's visit. ¹⁵⁸ The Soviet audiences were told that the Central Committee decided to go ahead with the Summit after keeping in mind certain "long term considerations." Canceling the Summit would have meant sacrificing a long list of important diplomatic opportunities, the lecturers said, and the results of the Summit proved that this was the right decision. ¹⁵⁹

The calculated risks which President Nixon took with regard to his ordering of a naval mining interdiction would, of course, only have been undertaken if a significant benefit for the United States or its ally could have been achieved. Since 1966, the comparative advantages and disadvantages of mining North Vietnam's harbors had been actively considered by United States planners. In 1967, President Johnson refused, however, to authorize such actions as "mining" or "quarantine-interdiction" which were designed, among other things, to "decrease the Hanoi and Haiphong sanctuary areas." ¹⁶⁰ One of the most vocal supporters of a tough mining thrust against the North Vietnamese Communists was Admiral U.S. Grant Sharp, former Commander of American forces in the Pacific. Writing in the Reader's Digest in May, 1969 after he had retired from the Navy, Admiral Sharp disclosed that he had proposed a plan which proved to be almost identical to the one ultimately carried out by President Nixon on May 8, 1972. ¹⁶¹

the Joint Central Committee to recommend the Committee to
President Wilson's visit. 181 The Joint Committee was told
that the Central Committee's decision is to stand with the
offer made by the Soviet Union. 182 The Committee
cancelled the Soviet visit and also cancelled a visit to
of important American representatives, the Japanese, and
the members of the Soviet Union. 183 The Soviet Union
decided. 184

The Committee also decided that the Soviet Union
regard to the visit of a Soviet Union representative
of course, only after the Committee has decided
for the United States of the Soviet Union. 185
Since 1914, the Committee has decided on the
Soviet Union's visit and also decided on the
by United States. 186 In 1917, the Committee decided
however, an American visit to the Soviet Union
information" and also decided on the Soviet Union.
"decided the Soviet Union and also decided on the
of the Soviet Union of a Soviet Union visit to
the North Atlantic Committee and decided on the Soviet Union.
former Committee of American forces in the Soviet Union
in the Soviet Union. 187 The Committee decided on the
the Navy, and also decided on the Soviet Union. 188
which proved to be almost impossible to do so. 189
carried out by President Wilson on May 1, 1917. 190

In advancing his arguments for a United States mining interdiction operation against North Vietnam, Admiral Sharp asserted that "closing an enemy's harbor is customary and logical in warfare."¹⁶² Admiral Sharp said that although he had recommended blocking Haiphong with mines laid by aircraft which represented the simplest and most effective measure the U.S. could have taken, these suggestions were always vetoed on the grounds that it "Would not affect the enemy's capability of waging war in South Vietnam."¹⁶³ In placing the blame for the "needless casualties" that resulted, Admiral Sharp wrote that Secretary of Defense Robert S. McNamara arbitrarily and consistently discarded the advice of his military advisers while pursuing the campaign on a "gradualistic basis that gave the enemy plenty of time to cope with our every move."¹⁶⁶

According to The Washington Post, the Pentagon Papers revealed that the Joint Chiefs of Staff adopted Admiral Sharp's proposal as early as October, 1966.¹⁶⁵ But these recommendations were principally rejected for the following two reasons: (1) such a move constituted an unacceptable risk with regard to the Soviet Union which "would place Moscow in a particular galling dilemma of how to preserve the Soviet position and its prestige in such a disadvantageous place,"¹⁶⁶ and (2) these measures were essentially ineffective since "no combination of actions [e.g. mining and bombing] against the North short of destruction of the regime or occupation of North Vietnamese territory [would] physically reduce the flow [of supplies] needed by the enemy . . . to continue the war against the South."¹⁶⁷

the following are summarized: (1) The first stage of the

investigation consisted of a preliminary survey of the

existing data relating to the problem of the

problem, as well as the (2) The second stage of the

investigation consisted of a detailed study of the

existing data relating to the problem of the

problem, as well as the (3) The third stage of the

investigation consisted of a detailed study of the

existing data relating to the problem of the

problem, as well as the (4) The fourth stage of the

investigation consisted of a detailed study of the

existing data relating to the problem of the

problem, as well as the (5) The fifth stage of the

investigation consisted of a detailed study of the

existing data relating to the problem of the

problem, as well as the (6) The sixth stage of the

investigation consisted of a detailed study of the

existing data relating to the problem of the

problem, as well as the (7) The seventh stage of the

investigation consisted of a detailed study of the

existing data relating to the problem of the

problem, as well as the (8) The eighth stage of the

investigation consisted of a detailed study of the

existing data relating to the problem of the

problem, as well as the (9) The ninth stage of the

investigation consisted of a detailed study of the

existing data relating to the problem of the

problem, as well as the (10) The tenth stage of the

Secretary McNamara also estimated that if Peking read the mining of Haiphong as an indication that the United States "was going to apply military pressure until the North capitulated," the Chinese might "intervene in the war with combat troops. . . ." 168

Therefore, President Johnson rejected the advice given to him by Admiral Sharp and the Joint Chiefs of Staff not only because he was reluctant to risk a clash with the Russians and the Chinese, but also because he was wary of domestic political opposition if such a course of action should ever be adopted.

However, beginning in 1969, during President Nixon's "winding down phase of the war," the debate on the mining plan took on a new sense of urgency as it related to the President's commitment to accelerate the withdrawal of U.S. troops stationed in Vietnam. According to The Washington Post, a collection of Secret documents compiled under the auspices of Dr. Henry Kissinger in 1969, showed that the debate during the early stages of the Nixon Administration fundamentally followed the position adopted during the Johnson years. However, since 80 per cent of all Communist aid passed through the Port of Haiphong, the Pentagon favored "a strong effort to interdict road and rail transport" from China to North Vietnam in "a concerted air campaign against all transportation. 169 Such moves, Pentagon analysts said, "would in large part, isolate Hanoi and Haiphong from each other" and would be "highly effective in reducing North Vietnam's capability to reinforce aggression in South Vietnam. 170 However, the CIA disputed this contention and argued that the effects of a sea

[illegible]

blockade "would be widespread but temporary" and that the North Vietnamese would find "alternative procedures for maintaining the flow of essential economic and military imports" within two or three months. The CIA said that the North Vietnamese could continue to receive supplies from China by rail, highways or rivers, and therefore the Communists had sufficient alternative avenues for transporting their supplies. The CIA report therefore concluded that "total interdiction of seaborne imports would be difficult because shallow-draft lighters could be used to unload cargo from the mined major harbor areas. ¹⁷¹

Dispite the misgivings expressed by the CIA and other administration analysts concerning the effectiveness of a Harbor mining interdiction campaign, the series of sudden military setbacks for the South Vietnames Armed Forces in the Spring of 1972, coupled with the appearance of enemy convoys of up to 200 trucks ¹⁷² recklessly running down South Vietnam's major highways in broad daylight, apparently convinced President Nixon that he had no alternative but to act decisively.

These convoys carrying ammunition, weapons and fuel for North Vietnames heavy armored vehicles (some of which consumed up to 18 gallons of fuel per mile of operation) were, for the most part, supplied by Soviet ships being offloaded at major deepwater ports such as Haiphong. Between 35,000 and 40,000 metric tons of fuel had been shipped into North Vietnam by the Soviet Union each month. ¹⁷³ It is also estimated that the

blockade "would be disastrous for humanity" and that the

North Vietnamese would find themselves "doomed for all

time" and that it would be "disastrous for all

which led to these words. The CIA said that the North

had no intention of making any concessions to the

highways or rivers, and therefore the Commission had

alternative systems for transportation that would be

report that the Commission had "been" establishing its

reports would be difficult because the North would

be used to make sure that the North would be

disputed the existing situation in the CIA and

administration would be concerned with the effects of a

within the Commission would be the same as within the

knows for the North Vietnamese in the North

1973, coupled with the appearance of some

200 pages 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000

1973, coupled with the appearance of some

200 pages 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000

that we had no intention of

which would be very

North Vietnamese

up to 12 million of food

most part, supplied by

disputed ports such as

metric tons of food

Soviet Union

Soviet Union supplied three times the tonnage of military goods as was furnished the North Vietnamese by China. 174

According to a New York Times article, the mining of the seven North Vietnamese ports would also cut down on North Vietnamese food supplies since as much as 40 per cent of North Vietnam's rice is imported from the Soviet Union and other Communist countries. 175 U.S. Defense Department officials acknowledged that food ships would be kept out of North Vietnamese ports since the only remaining alternative was to attempt to stop and search vessels which the United States had refused to do because of its contention that its current mining interdiction was not a blockade. According to recent intelligence reports, approximately 200,000 tons of supplies were delivered to North Vietnam each month, the bulk of which was shipped through Haiphong. 176

Six weeks after the mining if North Vietnam's ports had been completed, U.S. State Department spokesman, Charles W. Bray announced that U.S. air strikes on the North Vietnamese transportation network had substantially reduced the flow of military supplies from China and that over 1000 boxcars had been bottled up at the Chinese border. 177 Mr. Bray then said: "What does seem clear is that the air strikes on the North Vietnamese transportation network, and particularly the railroads, have had a very substantial effect, [although] less conclusive perhaps than the mining of the ports which has had the total effect of closing those ports to sea traffic." 178 (Emphasis added).

Revised Union supplied since the country is still poor

as was furnished the North Vietnamese by China. 171

According to a New York Times article, the United States

the same North Vietnamese force would also not want to

Vietnam's food supplies since we must be in the way of

Vietnam's life as indicated from the United States and

Communist countries. 172 U.S. Defense Secretary McNamara

acknowledged that food supplies would be lost and that

power, power and the only remaining possibility was to

attempt to stop the North Vietnamese from the United States

had refused to do business at the Convention. The United States

which intervention was not a mistake. According to reports

intelligence reports, approximately 100,000 tons of supplies

were delivered to North Vietnam each month, the bulk of which

was shipped through Hanoi. 173

It was also stated that the North Vietnamese were not

been completed, U.S. State Department spokesman, Douglas, in

announced that U.S. air strikes on the North Vietnamese

portable network had substantially reduced the flow of military

supplies from China and that over 1000 tons had been

up at the Chinese border. 174 The only two roads

now exist is that the air strikes on the North Vietnamese

transportation network, and particularly the railroads, have

had a very substantial effect, (McNamara) have remained

than the kind of the North Vietnamese and the South Vietnamese

closed those roads to see traffic. 175 (McNamara added)

Later, at the Pentagon, a spokesman said that there had been no movement in or out of North Vietnamese ports since they had been mined nor had any mines exploded.

On May 29, 1972, The Washington Post also reported that there was no evidence that either China or the Soviet Union was attempting to supply North Vietnam by air or by ground to compensate for the reduction in war material caused by the U.S. mining of its ports.¹⁷⁹ Another American source said that North Vietnam had not taken any measures itself to offset the mining or the renewed U.S. bombing raids although it had three weeks in which to do so. U.S. intelligence sources noted that the American strategy in the North was having its intended effect since the firing of artillery and surface-to air, anti-aircraft missiles as well as other offensive weapons was reported to have dropped off sharply.¹⁸⁰ These U.S. officials also claimed that there was already a gasoline shortage in the North. Although exact figures as to how long it would take using May 8th as a starting point for the U.S. mining campaign to become completely effective were not available, military sources did estimate that it would take between two to six months for the U.S. mining campaign to seriously impede the North Vietnamese war-making capability.¹⁸¹ It was also noted that as late as three weeks after President Nixon had announced the mining of North Vietnamese ports, no indication could be found that the North Vietnamese were making any effort to repair destroyed or

damaged bridges, roads or rail lines. ¹⁸² This inactivity was in marked contrast to the "Rolling Thunder" bombing campaign of 1965-1968 when the North Vietnamese, with the aid of some 50,000 Chinese repair crewmen, made almost superhuman efforts to keep these vital communication lines operating. ¹⁸³ One possible explanation may be that U.S. Navy and Air Force aircraft have had far greater success in hitting their targets due to the utilization of laser and television guided "smart bombs." ¹⁸⁴

According to informed U.S. sources, the so-called "smart bombs" which in one instance successfully destroyed, in a single air strike, the center span of the Thanhhoa Bridge which had earlier withstood repeated aerial sorties using conventional bombs, were guided to their target by laser beams transmitted by attacking aircraft or by mini-T.V. sets carried in the nose of the bomb depending on which version of the weapon was used. ¹⁸⁵ In stressing the accuracy of these new weapons, military sources said that fewer aircraft releasing fewer weapons could be used to achieve better bombing results while minimizing the casualties and damage to civilians and their property due to the inaccurate or inadvertent delivery of weapons. The high degree of accuracy of these newly developed guided weapons is extremely significant since a principal effect of the U.S. mining campaign is to compel the North Vietnamese to rely upon road and rail shipment methods since sea-borne delivery of supplies has been extensively curtailed.

F. Description of Naval Interdiction Techniques
Employed by the United States

1. Composition, Deployment and Tactics of
United States Interdiction Forces

A U.S. task force which was reported to represent the largest air and naval armada ever assembled off the coast of Vietnam, mined the entrances of Haiphong and six other North Vietnamese ports ¹⁸⁶ in an attack which commenced on the evening of May 8, 1972 and which was successfully concluded a few hours later when all U.S. aircraft safely returned to their assigned carriers. ¹⁸⁷ While the exact number of mines laid was not disclosed by the Navy, an earlier Pentagon study showed that a total of only 200 mines which could be dropped by A-6 attack bombers, would effectively seal off virtually all of North Vietnam's major ports and waterways. The study revealed that as few as two dozen well-placed mines would be sufficient to make impassable the 10-mile-long Cua Cam River which leads from the Gulf of Tonkin to the Port of Haiphong.

Later, In a news conference on May 10, 1972, Secretary of Defense Melvin Laird confirmed that on May 8th, at 9:04 P.M. Washington time, U.S. Navy aircraft had indeed launched from two U.S. carriers and had successfully concluded their first

I. Composition, Employment and Control of
United States Naval Forces

A U.S. task force which was reported to consist of
largest size and most varied composition ever assembled off the coast of
Vietnam, aimed the resources of surface and air units
Vietnamese ports¹⁸⁶ in an attack which commenced on the night
of May 8, 1972 and which was successfully completed. The force
later when all U.S. aircraft safely returned to their assigned
carriers.¹⁸⁷ While the exact number of ships taken was not
disclosed by the Navy, an earlier Pentagon press release stated
a total of only 200 ships were sunk in the Gulf of Tonkin
operation, would effectively seal off virtually all of North
Vietnam's major ports and waterways. The study revealed that
as few as two dozen well-armed ships would be sufficient to
make impossible the 10-15-100 ton tonnage which would
the Gulf of Tonkin to the rest of Vietnam.
Later, in a press conference on May 16, 1972, Secretary of
Defense Melvin Laird confirmed that on May 10, 1972, U.S.
Washington time, U.S. Navy aircraft had indeed launched from
two U.S. carriers and had successfully sunked North Vietnamese

mine drops in North Vietnamese harbors utilizing interdiction techniques which were substantially the same as those outlined in earlier Pentagon studies. ¹⁸⁸ After the mines had been laid, the Navy disclosed that its task force had consisted of at least 60 ships including five aircraft carriers with 350 to 400 planes aboard, four cruisers and thirty destroyers. ¹⁸⁹

The aerial mining of Haiphong Harbor centered on a narrow channel called the Canal Maritime which had been laboriously dredged into Haiphong Harbor by the French and later by the North Vietnamese. The Canal Maritime is about one mile long, 500 yards wide and dredged to a depth of about twenty feet. ¹⁹⁰

The mines which the U.S. Navy aircraft laid were set to become automatically activated after three "daylight periods" ¹⁹¹ or at 1800 hours, Thursday, May 11th, Saigon time. ¹⁹² After this three day "grace period" had elapsed, any ships which had not yet departed from North Vietnamese ports would have to do so at their own peril. ¹⁹³

Information as to which type of aerial mines were laid (e.g. magnetic, acoustic or pressure) was not initially supplied by Pentagon sources except to say that the U.S. mines which were used weighed between 1000 and 2000 pounds and were sown by carrier aircraft. However, five days later, Pentagon sources revealed that only the magnetic type of mines had been planted adding, however, that if any future mining was required, it might involve "other types" of advanced mines such as those

activated by pressure or sound. 194

In addition to planting mines at the entrances of North Vietnam's harbors, the United States simultaneously laid mines in North Vietnam's canals, rivers and other inland waterways. These mines were placed in the Inland waterways as part of an overall effort to mine "choke points" and other transshipment locations critical to the North Vietnamese waterborne supply system. 196 This action was said to be in compliance with the President's May 8th directive to U.S. forces "to take appropriate measures within the internal and territorial waters of North Vietnam to interdict the deliveries of [enemy] supplies." 197

The initial public disclosure of the measures taken by the United States were summarized by The New York Times lead article of Tuesday, May 9, 1972 which succinctly outlined the President's interdiction techniques as follows:

All major North Vietnamese ports would be mined, ships of other countries in the harbors, most of which are Russian, would have three "daylight periods" in which to leave. After that, the mines will become active and ships coming and going will move at their own peril.

United States naval vessels will not search or seize ships of other countries entering or leaving North Vietnamese ports, thus avoiding a direct confrontation with Russia.

in addition to the fact that the evidence of the
 Vietnam's history, the United States administration, and the
 in North Vietnam's history and other United States
 those who were killed in the United States in 1967 at
 overall effort to bring about peace, and other
 locations visited on the road to peace, and other
 system. This system is also in the United States
 President's and the Secretary of State, and the
 members of the United States administration, and the
 Vietnam to establish the following of peace, and other
 The United States administration, and the
 United States administration, and the
 of the United States administration, and the
 information, and the

All the United States administration, and the
 of the United States administration, and the
 which are United States administration, and the
 United States administration, and the
 All the United States administration, and the
 of the United States administration, and the
 United States administration, and the
 of the United States administration, and the
 United States administration, and the

American and South Vietnamese ships and planes would take "appropriate measures" to stop North Vietnam from unloading material on beaches from unmined waters.

United States and South Vietnamese forces would interdict, presumably by bombing, the movement of materiel in North Vietnam over rail lines originating in China. 198

Immediately following the President's May 8th announcement, Daniel Z. Henkin, Assistant Secretary of Defense for Public Affairs, insisted that the United States mining action was not a "blockade" and that stopping foreign ships and searching them would not be undertaken by U.S. naval forces. 199 While small intercoastal cargo vessels and lighters attempting to offload supplies from ocean going vessels would be subject to air and sea attack, the Soviet Union, China and other Communist nations whose large ocean-going ships remained beyond the North Vietnamese claimed territorial 12-mile-limit would not be subject to any offensive interdiction measures whatsoever. During subsequent Pentagon briefings, military analysts said that a full-scale blockade, in which United States vessels tried to turn away, stop or search Soviet or Chinese vessels under threat of sinking them if they failed to heed such a command, would clearly have raised a totally unacceptable risk of major confrontation among the superpowers which the United States was attempting, at all costs, to try and avoid. 200

President and Mrs. Roosevelt will be in
Washington, D.C., on Monday, May 10, 1943.
The President will be in the White House
at 10:00 a.m.

President and Mrs. Roosevelt will be in
Washington, D.C., on Monday, May 10, 1943.
The President will be in the White House
at 10:00 a.m.

President and Mrs. Roosevelt will be in

Washington, D.C., on Monday, May 10, 1943.

The President will be in the White House

at 10:00 a.m.

President and Mrs. Roosevelt will be in

Washington, D.C., on Monday, May 10, 1943.

The President will be in the White House

at 10:00 a.m.

President and Mrs. Roosevelt will be in

Washington, D.C., on Monday, May 10, 1943.

The President will be in the White House

at 10:00 a.m.

President and Mrs. Roosevelt will be in

Washington, D.C., on Monday, May 10, 1943.

The President will be in the White House

at 10:00 a.m.

President and Mrs. Roosevelt will be in

Washington, D.C., on Monday, May 10, 1943.

The President will be in the White House

at 10:00 a.m.

President and Mrs. Roosevelt will be in

Washington, D.C., on Monday, May 10, 1943.

The President will be in the White House

However, administration officials distinguished the President's current mining interdiction campaign by noting that: "If they [foreign ships] chose to run our minefields and are sunk, [then] they've been forewarned. That's fundamentally different than signalling a Soviet vessel to turn back or be shot out of the water by us." 201

A synopsis of the courses of action which the United States was prepared to undertake would therefore appear to be as follows:

(1) All Ocean-going foreign vessels bound for North Vietnamese ports would be warned by the United States of the existence of U.S. mine fields while they were still enroute to their destination and then warned again while at a sufficiently safe distance before making their approach to dangerous coastal waters.

(2) No attempt to stop any foreign vessel which sought to penetrate the U.S. mine fields would be undertaken except to provide specific warning that these vessels were proceeding at their own peril into mined waters.

(3) Foreign vessels offloading supplies beyond North Vietnam's territorial waters for lightering by barges or other

shallow draft vessels would not themselves be subject to attack. However, the barges and lighters would be attacked by air and naval forces once they had safely cleared the foreign vessel, had entered territorial waters and were headed for shore.

(4) No attempts at direct interference with third country forces (such as Russian minesweepers) attempting to sweep North Vietnamese harbor approaches would be undertaken. However, "reseeding" of mine fields previously swept would be undertaken immediately by U.S. forces as soon as U.S. mines had been swept.

2. Notification Methods Employed by the United States to Warn Foreign Nations

During his May 10th Pentagon press conference, Secretary of Defense Melvin Laird said that the United States had given worldwide general notification "that the harbors of North Vietnam have been mined . . . [and] that we [the U.S.] will not permit the landing of supplies in North Vietnam." ²⁰² Presumably, Secretary Laird's reference to notification of "the entire world" was intended to refer to Special Warning No.42 (O 090142Z) which was a naval message transmitted to all mariners by the Naval Oceanographic Office, Washington, D.C. warning that

[illegible]

the internal and claimed territorial waters in and around the entrances to seven North Vietnamese ports had been mined (See Appendix B). The third paragraph of this Naval Message advised that:

The Naval Forces of the Republic of Vietnam and the United States have been instructed to use their best efforts to insure that all vessels transiting the high seas in this area are notified by appropriate signals of the above-noted measures being undertaken within the internal and claimed territorial waters of the Democratic Republic of Vietnam.

The degree of careful planning and commitment with which the U.S. Navy approached the problem of giving appropriate notification to foreign vessels which were about to enter North Vietnamese mined waters is revealed in a U.S. Seventh Fleet announcement reporting that a number of U.S. destroyers assisted by 164-foot-long gun boats stationed along the "notification line" off Vietnam were prepared to "warn any merchant ship away from North Vietnam in 10 spoken languages and [in the appropriate] international signal codes." 203 (Emphasis added).

In one such incident, a Russian-speaking American aboard the U.S. destroyer escort McMorris hailed the Russian surveillance trawler Izmeritell by means of a loudspeaker to warn the

Soviet ship away from the mine field at North Vietnam's second largest port of Vinh. After telling the Russians that they were about to sail into the U.S. planted mine field, the Soviets ran up international signal flags which said: "Thank you for your cooperation and have a pleasant voyage," then the Izmeritell altered course and sailed away.²⁰⁴

3. Preliminary Results of United States Mining Interdiction Measures

At the time the President made his mining announcement, 37 ships were nearly filling the Port of Haiphong to its capacity. Of these, 16 were Soviet vessels, 11 were from other Communist bloc nations and the remainder flew the flags of Somali or Great Britian with Hong Kong registry.²⁰⁵ Within the three day "grace period" before the American-laid mines became active, five vessels, four of them Russian, safely departed the Port of Haiphong.²⁰⁶ About one-half of the approximately 25 Soviet vessels which were then enroute to Haiphong when the mining interdiction was first announced turned back or changed course for alternate ports.²⁰⁷ While few targeting restrictions remained for U.S. aircraft assigned missions to bomb Haiphong, an apparent agreement between the United States and the Soviet Union to protect the latters trapped vessels, clearly placed the Haiphong dock area off limits to future U.S. air strikes.²⁰⁸

Despite the apparent early course changes ordered for Soviet merchant vessels by the Soviet Union, five days after the mining had commenced, a Soviet shipping official revealed that eight Soviet merchant vessels carrying fertilizer, agricultural machinery, food and clothing were steaming for the Port of Haiphong.²⁰⁹

Presumably this order accompanied by the announcement of the inoffensive nature of the ships' cargoes was made to emphasize the fact that the United States publically had made no provisions whatsoever for ships carrying civilian consumer goods to enter the mined ports and harbors of North Vietnam.

Less than ten days after the American mining campaign had begun, North Vietnamese authorities reported that minesweeping operations were being conducted to clear Haiphong's approaches of mines as soon as U.S. planes dropped them.²¹⁰ The North Vietnamese claim that ships were moving in and out were difficult to verify, but, "independent sources" reported the arrival of a single East German ship²¹¹ during the second week of May and Radio Hanoi claimed that one Japanese ship carrying medical supplies had gotten through the American "blockade" although the name of the vessel and the time and place of its departure were not disclosed.²¹² In refuting these North Vietnamese claims, Admiral Thomas H. Moorer, Chairman of the Joint Chiefs of Staff, said on May 13th at Newport News, Virginia that no attempt by North Vietnamese minesweepers to clear U.S. mines had been observed and no foreign ships had attempted to run U.S. mine fields.²¹³

During the period early in 1964, the Japanese government for Japan
transport vessels by the Japanese Government, five days after the
had commenced, a number of Japanese official vessels had
Japanese merchant vessels carrying fertilizer, agricultural
injury, food and clothing were essential for the four of them.
It was said that this order was issued by the government of the
Inoffensive nature of the order, however, the order was
the fact that the United States had been in possession
whatsoever for this order. The Japanese government could not
the United States and Japan at that time.
Last then can only after the Japanese order was issued
Japan, North Vietnamese authorities received the information
operations were being conducted to assist Japanese government
of mines as soon as possible. The Japanese government
names of the ships which were in the area of the
to verify, but, "In addition, another" reported the arrival of a
single last German ship. ¹¹¹ During the period from May 1964
Radio had stated that the Japanese ship carrying medical
supplies had entered through the Japanese "border" along the
name of the vessel and the size and place of the Japanese
not disclosed. ¹¹² It related that North Vietnamese
Michael Thomas E. Brown, Chairman of the Joint Chiefs of Staff,
said on May 1964 at Newport News, Virginia that in regard to
North Vietnamese newspapers in April 1964, it was said that
and no foreign ships had attempted to run the mine fields. ¹¹³

Despite conflicting claims as to whether an occasional ship was fortunate enough to pass through the U.S. mine fields unharmed, one significant fact remains and that is that the hazards and difficulties for merchant vessels to safely navigate U.S. mine fields as well as the delays and dangers of using lighters and barges to transfer cargo ashore, has effectively reduced North Vietnam's capacity for seaborne delivery of supplies to a tiny fraction of their pre-May 8th shipping levels. One measure of the effectiveness of the U.S. mining interdiction campaign was clearly spelled out by Air Force Lieutenant General George Eade in a briefing given on June 8, 1972. At this briefing, General Eade cited as an indication of the effectiveness of the U.S. campaign, a decrease in supplies moved by North Vietnamese coastal shipping to the South. This shipping loss, according to General Eade, has resulted in a reduction of approximately 20,000 tons of supplies a week to the present capacity of virtually no deliveries at all. 214

Furthermore, despite strenuous efforts which have been undertaken by the North Vietnamese to reduce the effectiveness of the U.S. mining campaign by using barges to transfer cargo from freighters outside the area of its mined ports, the North Vietnamese have continued to sustain high losses of lighters and barges in and attempt to circumvent the restrictions imposed by the U.S. mining measures. According to one news report originating

in Saigon, North Vietnamese barges, after receiving supplies from cargo vessels anchored off the coast of North Vietnam, attempt during the night, to slip ashore through marshes and canals not screened off by U.S. mines. But these evasive tactics are seldom successful because U.S. "high speed", "low, level" reconnaissance planes are constantly flying over the beach areas around the seven mined ports and their observers usually sight the "blockade-running" barges in time to summon bombers to sink them. 215

Another senior Air Force Officer credited Navy carrier-based planes for most of these new interdiction measures since the Seventh Fleet has the primary responsibility for Haiphong and other coastal areas. He said that unless the barges reach a tidewater jungle wilderness where they can disperse and be camouflaged, they are easy targets for attack bombers and are invariably destroyed. "One day, we caught fifty barges and destroyed them all," he said. 216 Small barges, after being loaded from freighters, are usually towed in tandem by tugs. But some wooden barges are more than 100 feet long, and are self-propelled with a greater cargo-carrying capacity than a coastal steamer. 217

The Officer said that the freighters always anchored safely away from the mined waters. However, he did not indicate that they always anchored in international waters. 218

in regard to the situation. After a short time
from early morning until the end of the day
attempts were made to get the ship out of the
canal and around the bend by 11:30. The ship
and other boats were in the canal. The ship
recommenced plans and commenced flying over the water
around the bend with great speed and accuracy. The
the "Albatross" began to rise in the air and
then.

Another boat was seen flying over the water
plans for part of the day and the ship was
Several times the ship was seen flying over the
other boats were in the canal. The ship
Albatross began to rise in the air and
announced, that the ship was in the canal and
inverted. The ship was seen flying over the
described the ship. The ship was seen flying
loaded from the ship. The ship was seen flying
and some other boats were in the canal. The ship
self-propelled ship. The ship was seen flying
boat.

The ship was seen flying over the water
safety was the ship. The ship was seen flying
that they always landed in the water.

When the mining of North Vietnam's harbors was first commenced on May 8, 1972, Admiral Thomas Moore, Chairman of the Joint Chiefs of Staff, said that Seventh Fleet warships would not intercept supply vessels on the high seas. However, Admiral Moore also made it clear that if any vessel attempted to land cargo ashore, "we [would] take whatever action is necessary to prevent this." 219 But the high ranking Air Force source intimated that while the ocean-going freighters may be at anchor in weather protected territorial waters needed for cargo-transfer operations, these ships were not attacked simply because they were no longer considered to be on the "high seas." 220 It was only after the barges had left the "mother ship" that the barges themselves were subject to attack, he said. 221

Three weeks after this interview had been conducted, the U.S. Seventh Fleet in a delayed report, announced that U.S. destroyers sank 13 barges off the coast of North Vietnam 30 miles northeast of Dong hoi in predawn attacks conducted on July 10, 1972. 222

Not only were barges attacked by U.S. forces when they were "in transit" from off shore freighters; but enemy naval bases had also been hit by U.S. aircraft in an effort to prevent off-loaded supplies from Chinese freighters anchored off the Port of Vinh, from being safely moved on shore. 223

When the station of South Station was closed

commenced on May 1, 1911, several months before the

the Joint Chiefs of Staff, and that the station was

not necessary until the station was closed, and

South Station was closed, it was found that the

CAIRO station, and South Station was closed, and

reverted to the station, and the station was

closed, and the station was closed, and the

in making the station, and the station was

operating, and the station was closed, and

were to be closed, and the station was

only after the station was closed, and the

immediately were closed, and the station

after the station was closed, and the

U.S. station, and the station was closed, and

station, and the station was closed, and

after the station was closed, and the

to the station

not only the station, and the station

the station, and the station was closed, and

had also been closed, and the station was

closed, and the station was closed, and

at the station, and the station was closed, and

To date, there have been no reported incidents involving foreign vessels striking mines or sustaining damage due to mines or other unexplained underwater explosions. However, a single incident involving an underwater explosion which damaged the U.S. destroyer Warrington was reported on July 18th when the 390 foot ship sustained damage from what was later reported to be a North Vietnamese laid mine. ²²⁴ After sustaining moderate damage, the Warrington left the Tonkin Gulf where it had been engaged in sinking barges and other craft which were attempting to ferry war materials ashore from Chinese freighters. The 3,4000 ton Warrington left its station under its own power. Only one sailor among the destroyer's crew of 270 crewmen was injured and his minor injuries were quickly treated so that he was able to return to duty. ²²⁵

While the statistics concerning the sinking of enemy barges is significant, it can not be overemphasized that the mark of a successful mining interdiction campaign is not necessarily the number of barges or lighters sunk, but the total amount of supplies which have been eliminated from the enemy's supply lines. A significant indication of the telling effects which the United States mining interdiction is causing, can be observed in the increase efforts which the North Vietnamese have expended in seeking alternate methods of supply and communication and in increased propaganda efforts designed to curtail and minimize the psychological effects of these U.S. operations. For example,

one Communist news agency reported that "youth shock brigades" are taking a large share of the work in keeping "bridges, highways and ferries open despite heaving bombing" 226 The same agency also claimed that sea communications are still functioning despite American air raids and the mining of ports while "young seamen have made every effort to ship more cargoes within a short period to bring them safely to their destinations. 227 Countering these Communist claims, however, are U.S. assertions that North Vietnam "is no longer in a position to send south large amounts of supplies because communications, railroads, highways and truck fleets have been seriously damaged and because the supplies of fuel and ammunition in depots has been drastically reduced. 228 After reviewing these conflicting claims, however, one significant factor still remains, and that is that the more petroleum supplies which the North Vietnamese are effectively prevented from receiving by sea, the more limited and restricted will be the movement and advances of their mechanized land forces and the more dependent they will become on rail and other modes of transportation.

It may be that it is still too early to accurately assess the true impact of the U.S. mining interdiction activities on the North Vietnamese or to intelligently evaluate the competing and often conflicting claims of both sides. Perhaps, however, it would be more prudent and realistic to accept the cautious appraisal made by Secretary of State William P. Rogers when he said that there are "indications" that the Communist offensive

and Communist have been working for years to bring about a
are taking a large share of the work in Vietnam, Laos,
ways and tactics from Communist training facilities. The
agency also claimed that the government was not fully
despite American air raids and the threat of more such
seems have made every effort to keep the country out of a
period to bring them safely to their destinations. (37) (Continued)
these Communist claims, however, are not supported by facts.
Vietnam" is no longer a neutral but a Communist state, and
of supplies become Communist, military, economic and other
effects have been seriously damaged and economic life paralyzed.
fuel and ammunition in support of the Communist forces.
After reviewing these activities, the U.S. State Department
factor still remains, and that is that the North Vietnamese
which the North Vietnamese are attempting to promote their
ing by sea, the two limited and restricted will be the economy
and advance of their revolution, and that the North Vietnamese
and they will become a full and active part of the revolution.
It may be that it is still too early to say whether or not
the true impact of the U.S. military intervention will be
the North Vietnamese to no longer be able to sustain the
and often continued claims of their allies, friends, family
it would be more prudent and realistic to assume the position
appraisal made by Secretary of State William P. Rogers when he
said that there was "indication" that the Communist offensive

has not succeeded [and] that Hanoi is disappointed with the outcome of the [recent military] offensive while the U.S. mining and bombing is [becoming] effective and a number of other governments want a peaceful solution. "These and other indications in the Diplomatic Community," the Secretary said, "give us some hope that the other side is interested in a negotiated peace." 229 Perhaps the continued implementation of the current U.S. mining campaign can materially expedite the advent of the meaningful and long awaited negotiations which are now envisioned by Secretary Rogers.

G. Reactions to United States Mining
and Naval Interdiction Operations

1. Domestic Reaction

Amidst vocal, anguished and uncommonly strong cries from leading Presidential contenders such as Senators Humphrey and McGovern that President Nixon's decision to mine North Vietnam's harbors was a "serious escalation" of the war which was fraught with "unpredictable danger" 230 and represented a "new escalation [which was] reckless, unnecessary and unworkable" 231 and risked the possibility of triggering World War III, United States domestic reaction to the President's move, particularly in the political arena, seemed to be almost evenly divided along predict-

that the other side is interested in a complete peace. - 124

[illegible]

able patterns of party alignment. While leading Republicans acclaimed the President's interdiction actions, Democratic leaders, on the other hand, called them reckless. Republican House Leader Gerald R. Ford (R- Mich.) said that the President was "generous in his bid for peace but firm in his determination that we will not surrender [and that] [t]he only way left to end the Vietnam war is to deprive the enemy of the supplies he needs to continue the invasion." 232

Senator Robert P. Griffin of Michigan, the Assistant Republican Leader in the Senate said of the president's announcement that " it was strong medicine but necessary" 233 while Senate Majority Leader Mike Mansfield (D-Mont.) said that the President's decision "expands the war and makes settlement more difficult." 234

Senate Minority Leader Hugh Scott (R-Penna.) on the other hand told reporters that "we are probably not in any more danger of a serious confrontation with either Russia or China as a result of the President's action [and], I assume that they understand [that] the President will proceed within the rules of war." The Senator also said that "the decision does not constitute a widening of the war or a blockade which would interdict third-nation ships at sea, [since] it's a restriction on supplies . . . [which] should [only] have an effect on hampering the North Vietnamese." 235

Amidst calls for massive marches and rallies in the Capitol and while speeches delivered both in protest and in support of the war were being given throughout the Washington, D.C. area, 236

able evidence of party discipline. The House majority
included the President's personal staff, including
etc. on the other hand, calling them "party" members.
Leader Smith is now, I think, said that the President was
"generous" in his use of power but this is the same as saying
we will not surrender (and that) (that only was said in the
Vietnam war is to describe the same as the evidence in favor of
continuing his invasion." 121

Senator Robert F. Kennedy, the President's brother,
and I think in the Senate Hall of the President's administration
"it was strongly believed and known" that this was a mistake
Leader John Kennedy (D-Calif.) said that the President's decision
"regarding the war was a mistake and a disaster." 122

Senator Kennedy (D-Calif.) said that the President's
sole responsibility for the war was his own. He said that a
series of conferences of the White House of the President
the President's staff (and I think that they were wrong) that
the President's staff (and I think that they were wrong) that
the President's staff (and I think that they were wrong) that
also said that the President was not responsible for the war.
for or a shooting war (and I think that they were wrong) that
[also] it is a mistake to say that the President is responsible
have an effect on the President's staff. 123

Senator John Kennedy (D-Calif.) said that the President
and while the President's staff is wrong and is wrong on the
war were being given throughout the President's staff. 124

Senator Mike Gravel, (D-Alaska), proceeded to read, from the floor of the Senate, a National Security Study memorandum prepared by Dr. Henry A. Kissinger setting forth that North Vietnamese shallow-draft vessels could readily be used to overcome most U.S. mine laying measures. 237

Following these developments, Senate Democrats met in a caucus on May 9th, and adopted a resolution by 29 to 14 condemning the President's action while "disapproving [of] the escalation of the war." 238

On the opposite side of the issue, the White House mounted a formidable effort to demonstrate that the President's decision was supported by the majority of the American public. On Wednesday, May 10, 1972 White House Press Secretary Ronald L. Ziegler released the results of a poll conducted by Opinion Research Corporation indicating that three out of four Americans backed the President's decision while the first 20,000 telegrams received at the White House from American citizens indicated that "five to six to one" were in favor of the U.S. mining." 239

The Administration also counter attacked with cabinet-level spokesman such as Secretary of the Treasury John B. Connally who accused the Democrats of playing politics with the war in such a manner as to "raise doubts in my mind about their essential commitment to the best interests of the nation." 240 Meanwhile, Senator Gale McGee (R-Wyo.) saw the President's move as being so serious that "this [was] a time to keep quiet and hope that the

Senator Mike Gravel, (D-Alaska), presented in 1971, from the floor of the Senate, a national committee study committee report by Dr. Henry A. Kissinger stating that such a study was not needed. The committee's report could readily be used to overcome such a study. 217

Following these developments, Senate Committee was in a caucus on May 27th, and adopted a resolution of 75 to 19 condemning the President's action. The President's action was also condemned of the war. 218

On the opposite side of the issue, the White House moved a formidable effort to demonstrate that the President's decision was supported by the majority of the American people. On Wednesday, May 10, 1970, White House Press Secretary Ronald G. Reagan released the results of a poll conducted by Opinion Research Corporation indicating that three out of four Americans backed the President's decision. With the date 75,000 signatures received at the White House from American citizens indicating that "it is to me to one" was in favor of the President. 219

The administration also continued to work with various level spokesmen such as Secretary of the Treasury John W. Connally and accused the Democrats of giving evidence with the war to such a manner as to "false debate in my view about what essential commitment to the war is made by the President. 220

Senator Carl Albert (D-Mont.) and the President's move as being so serious that "this issue is now so serious and hope that the

President lucks out." 241

Despite the strong rhetoric and the violence of some of the demonstrations following the President's mining announcement, the nations's reaction as a whole to the mining decision was distinctly more muted than the anguished outcry which followed the invasion of Cambodia in May, 1970. Perhaps this wait-and-see attitude demonstrated by many Americans was taken in the belief that something more was involved in the President's mining announcement than met the eye and that the President was also engaged in a complex military-political maneuver with the Soviet Union which ultimately could bring about a negotiated solution to the war. Significant support for such a view was graphically provided to Americans on May 11, 1972, the day that U.S. laid mines automatically became activated, ²⁴² when Soviet Ambassador Anatoliy F. Dobrynin and the Soviet Minister of Foreign Trade, Nikolai Patolichiev met with President Nixon in the Oval Office of the White House in what was later described as "affable talks" reaffirming the likelihood of a scheduled May 22nd U.S. - Moscow Summit meeting.

2. Soviet Reaction

While the official Soviet news agency Tass quickly bristled with accusations concerning President Nixon's "naked aggressive

acts" of mining North Vietnamese ports, the Communist news agency was nevertheless conspicuously silent as to what Moscow's official response might ultimately be. ²⁴³ While this initial six paragraph Soviet dispatch was relatively free of the usual Communist rhetoric, it did, in fact, clearly focus on what President Nixon had actually said during his mining address of May 8th. The Tass report said that while "the Nixon speech contains a lot of assurances that the United States wants to put an end to the war in Vietnam . . . [the] practical steps including the measures announced by the President, speak of something else. ²⁴⁴

Tass did report, however, that President Nixon had said that the blockade "was not aimed against any 'other' nations" and accurately reported the U.S. President's pledge to withdraw all forces within four months after a cease-fire and the liberation of all American prisoners had occurred. ²⁴⁵

Meanwhile, in Helsinki, Finland, U.S. and Russian negotiators met as scheduled on the day following the U.S. mining announcement in a continuation of their Strategic Arms Limitation Talks (SALT). The only reported departure from normalcy was the late arrival of the Soviet delegation to the 122nd session. The Soviet delegation which was headed by chief negotiator Vladimir S. Semenov, deviated only slightly from its pattern of perfect punctuality by arriving some seven minutes late. ²⁴⁶

...of the ... the ...
... was ...
... response ...
... graph ...
... rhetoric ...
... had actually ...
... report ...
... and ...
... Vietnam ...
... announced ...
... This ...
... the ...
... accurately ...
... forces ...
... of all ...
... Marshall ...
... not ...
... in a ...
... The only ...
... the ...
... which ...
... only ...
... some ...

A similar desire on the part of Russian negotiators to continue, in spite of U.S. mining measures, to negotiate those agreements which were important to the Soviet Union was also reported by Secretary of the Navy John W. Warner, the chief U.S. negotiator at the U.S. - Soviet talks concerning naval incidents on the high seas. Secretary Warner, while entertaining a group of senior Russian naval officers, the first to visit the United States since World War II, provided the following anecdote:

[On] [t]he night the President announced the mining of Haiphong, I was having a dinner for the Russians in my home . . . by pure coincidence at nine [P.M.], the hour of the [President's] speech. I greeted [the Russians] at the door, giving them not a vodka but whiskey - a Virginia bourbon whiskey cocktail. [D]uring the [President's] speech they received a simultaneous translation. At the end [of the President's speech] there was not one word of acrimony. The chief of the Soviet delegation, Fleet Admiral Vladimir Kasatonov got up and said, 'Secretary Warner, shall we continue to enjoy the evening.'" 247

When the Soviet Union did finally issue its long awaited statement, the fact that it contained no ultimatum was considered as a favorable sign. The Soviet Statement, while resolutely condemning the United States "blockade" as a gross violation of the generally recognized principle of freedom of navigation" as well as a violation of the 1958 Geneva Conventions and the basic requirements of international law, did not set a firm deadline for the United States to cancel "without delay" its dangerous and

disruptive mining operations. 248

The first U.S. reaction to the Soviet response concerning the mining interdiction was that the Soviet statement constituted a delaying action in order to obtain more time for internal deliberations at home and for secret diplomacy abroad. In addition, it was widely believed by U.S. observers that the Russians were particularly eager to upstage their Chinese adversaries in relations with the United States and wanted to avoid, at all costs, anything that might jeopardize West Germany's ratification of treaties accepting its present European boundaries. 249 Many of the above mentioned gains which the Soviets had hoped for, could have been delayed or postponed - - in fact, it was Mr. Nixon's preliminary judgment that the Soviet leaders would probably rescind their invitation until the harbor blockage had been lifted. 250 However, it was also believed just possible that Hanoi had strained its relations with the Soviet Union in attempting to embarrass the Soviets over President Nixon's visit so that the Russians were no longer willing to run any serious risks on behalf of the North Vietnamese leadership.

The White House had repeatedly argued to the Soviet Union that nothing in Indochina was vital enough for either of the superpowers to justify the destruction of their promising negotiations and the mining of North Vietnam's

The first step towards the United Nations was the signing of the Russian Declaration and the Soviet Declaration. The United Nations was established in order to obtain peace and for internal deliberations by force and for proper relations abroad. In addition, it was widely believed by U.S. observers that the Russians were particularly eager to secure their Chinese adherents in relations with the United States and wanted to avoid, at all costs, anything that might jeopardize West Germany's realization of frontier neutrality for herself. European countries, too, were of the same opinion. It was, therefore, which the Soviet Union had been for, would have been delayed or postponed - in fact, it was not. When the preliminary talks went that the Soviet Union would probably receive their invitation until the Soviet Union had been lifted. However, it was also believed that possibly that would be attained in relations with the Soviet Union in order to be emphasized the Soviet Union's position. It was also the Russian side no longer willing to be in any way bound on behalf of the North Vietnamese Government. The White House was reportedly moved by the Soviet Union that nothing in connection was vital enough for them of the importance to justify the sacrifice of their promising negotiations and the status of North Vietnam's

harbors was merely meant to compensate for the heavy weapons which the Soviet's had provided for Hanoi's offensive. 251 Whether the reasons cited herein were of any major importance in convincing the leaders of the Soviet Politboro not to cancel the scheduled Summit meeting or whether other categories of controlling considerations prevailed, is impossible to ascertain at this time. One thing remains apparent, and that is the desire of the Soviets to continuously restrain themselves in reacting to the American mining policy was clearly of paramount importance to the Soviet Union in light of the long term benefits to be gained as compared to the short term inconveniences and delays which the Soviets might encounter. Were it not for the careful planning and prudent consideration shown the Soviet Union by the United States through timely notification and candid disclosure of our intentions, the outcome of the U.S. Mining campaign and the Summit meeting held on May 22nd, would no doubt, have been considerably different.

V. LEGAL ANALYSIS OF THE UNITED STATES MINING
AND NAVAL INTERDICTION OPERATIONS CONDUCTED
IN NORTH VIETNAMESE TERRITORIAL WATERS

A. Comparison Between the 1972 United States
Mining Interdiction and the United States
Cuban Missile Quarantine of 1962

1. Similarities Between the 1962 Cuban
Missile Quarantine and the 1972
Mining Interdiction Campaign

a. Necessity and Proportionality
Considerations

President Nixon, like President Kennedy ten years before him, relied heavily upon the provisions of Article 51 of the United Nations Charter in justifying the mining interdiction measures which he had ordered taken on May 8, 1972. Both Presidents Kennedy and Nixon asserted that the United States was clearly confronted with an immediate threat which required that the inherent right of collective self-defense provided for under the U.N. Charter be immediately exercised in order to protect the interests of the United States.

V. UNDERSTANDING OF THE FACTS OF THE CASE
AND THE FACTS OF THE CASE
AT THE TIME OF THE CASE

A. Comparison between the 1971 and 1972
United States and the 1971 and 1972
United States and the 1971 and 1972

I. Comparison between the 1971 and 1972
United States and the 1971 and 1972
United States and the 1971 and 1972

B. Comparison between the 1971 and 1972
United States and the 1971 and 1972
United States and the 1971 and 1972

Dispute over the 1971 and 1972
before the 1971 and 1972
of the United States
investing interest in the 1971 and 1972
1971. The 1971 and 1972
United States has clearly
threat of the 1971 and 1972
self-interest of the 1971 and 1972
fairly essential in order to protect the interests of the
United States.

Article 51 provides in part that "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. . . ."

While Article 51 provides for the exercise of the "individual" and the "collective" right of self-defense, both in the Cuban missile crisis and the North Vietnamese mining interdiction campaign, United States decision makers couched the invocation of this inherent right almost entirely in terms of being a collective self-defense measure. 252

The two primary legal requirements which must both be shown to exist for the lawful invocation of the doctrine of self-defense are the requirements of necessity and proportionality. 253

Requirements of Necessity

Necessity has traditionally been structured in rather narrow and abstract terms. Decision makers have attempted to limit lawful anticipatory self-defense by projecting a customary requirement that the expected attack exhibit so high a degree of imminence expressed in terms of being

Article 31 provides for the right of the

person to be heard in the proceedings.

Article 32 provides for the right of the

person to be heard in the proceedings.

Article 33 provides for the right of the

person to be heard in the proceedings.

Article 34 provides for the right of the

person to be heard in the proceedings.

Article 35 provides for the right of the

person to be heard in the proceedings.

Article 36 provides for the right of the

person to be heard in the proceedings.

Article 37 provides for the right of the

person to be heard in the proceedings.

Article 38 provides for the right of the

person to be heard in the proceedings.

Article 39 provides for the right of the

Article 40 of the Constitution

Article 40 provides for the right of the

person to be heard in the proceedings.

Article 41 provides for the right of the

person to be heard in the proceedings.

Article 42 provides for the right of the

"great and immediate" or "compelling and instant" so as to preclude effective resort by the intended victim to effective non-violent modalities of proportional response.²⁵⁴

These unfortunate and anachronistic terms of dire compulsion appear to have been generated in the aftermath of the Caroline case by Secretary of State Webster when he formulated the requirements of necessity along lines closely resembling the law of self-defense used in domestic law.

In the Caroline case,²⁵⁵ a steamer of that name was utilized to transport personnel and equipment from United States territory to Canadian rebels by crossing the Niagara River to a rebel held island and from there to the mainland of Canada. The United States did nothing to prevent the rebels from benefitting from the use of this United States sanctuary. Because of this inaction, Canadian troops were compelled to cross into United States territory and destroy the Caroline by setting her adrift so that she was wrecked on the Falls. Great Britain claimed that the conduct of the Canadian troops was justifiable self-defense. The United States made several feeble responses and the incident ultimately led to the tacit acceptance by the United States of the validity of

of the... and... as...
 to provide... in the...
 effective...
 These...
 complete...
 each of the...
 when...
 these...
 domestic...

In the...
 was...
 United...
 the...
 to the...
 to provide...
 side...
 Canadian...
 position...
 on...
 claimed...
 Justice...
 family...
 facts...

the initial self-defense claims which Great Britian had asserted.

In the light of the rapidity with which a modern military aggressor can jeopardize the security of a target state, it would seem that Secretary of State Webster's unfortunate formulation of the requirements of national self-defense as involving a "necessity of that self-defense [which] is instant, overwhelming, and leaving no choice of means and no moment of deliberation" is so narrow and unrealistically restrictive that in the era of highly mobile mechanized armor offensives as well as thermo nuclear missile delivery techniques, it would be unrealistic to insist that decision makers defer decisive action until it was entirely too late. 256

Requirements of Proportionality

In describing the coordinate requirements of proportionality when ascertaining the validity of a claim of self-defense, Professor McDougal and Dr. Feliciano have written that:

Proportionality in coercion constitutes a requirement that responding coercion be limited in intensity and magnitude to what

The initial self-delivered studies which were published in

1960.

In the first of the studies which were published

in 1960, the authors reported that the results of a study

showed that the results of the study were

independent of the results of the study.

self-delivered studies which were published in 1960.

logical in nature, the results of the study were

shown and no results of self-delivered studies were

self-delivered studies which were published in 1960.

self-delivered studies which were published in 1960.

self-delivered studies which were published in 1960.

self-delivered studies which were published in 1960.

self-delivered studies which were published in 1960.

References

In describing the results of the study of the

self-delivered studies which were published in 1960.

self-delivered studies which were published in 1960.

self-delivered studies which were published in 1960.

References are given to the studies which were published in 1960.

is reasonably necessary promptly to secure the permissible objectives of self-defense. For present purposes, these objectives may be most comprehensively generalized as the conserving of important values by compelling the opposing participant to terminate the condition which necessitates responsive coercion. 257

In the Case of President Kennedy's quarantine-interdiction action, the magnitude and the intensity of the United States responding coercion was precisely tailored to meet the emerging threat with which the nation was faced. In expressing the belief that the U.S. formulation and implementation of the Cuban naval quarantine-interdiction amounted to the least possible use of the military instrument, Professor William T. Mallison, Jr. in a work entitled "Limited Naval Blockade or Quarantine-Interdiction: National and Collective Defense Claims Valid Under International law" has concluded that:

Any lesser use [of force] would have amounted to [an] abandonment of the military instrument and [resulted in the] exclusive reliance upon non-coercive procedures which most certainly would have been ineffective without supporting military power. The quarantine-interdiction clearly meets the requirement of reasonable necessity in its most stringent form. In the same way, the proportionality requirement in most extreme form, is easily met. 258

[illegible]

national law, but concluded that

[illegible]

While the proportionality and necessity requirements which were needed to satisfy the collective self-defense standards of Article 51 were clearly and convincingly established by the United States during the Cuban missile crisis, it does not necessarily follow that any other situation such as a threat to the safety and the integrity of U.S. forces in South Vietnam must also reach the exact level and intensity of the 1962 missile crisis in order to support a valid self-defense claim. In other words, while it is difficult to imagine a situation since October of 1962 in which a more extreme and apparent threat to the United States has been shown to exist, it does not necessarily follow that a more remote and less immediate threat to the United States mainland and its people, such as in the case of the 1972 Spring offensive in South Vietnam, would not also, under the circumstances, be able to satisfy the requirements of Article 51. For while the President may have chosen for foreign and domestic political purposes to stress the jeopardy of the lives of 60,000 Americans in South Vietnam during his speech, he also acknowledged that a failure on the part of the United States to effectively repel the North Vietnamese invading forces would, in essence, mean "abandoning our commitment in Vietnam . . . and turning

17 million South Vietnamese over to Communist tyranny and terror." 259

In terms of the immediacy of the threat to those South Vietnamese living in the Central Highlands of our small ally, the threat imposed by the full scale, twelve division, North Vietnamese Army invasion of Spring, 1972 should have more than satisfied the self-defense "necessity" requirements of Article 51.

While the proportionality requirements of self-defense will be reviewed again later in this thesis, it should suffice , at this point, to say that both the Cuban quarantine and the North Vietnamese mining interdiction appear to amply meet requisite self-defense standards. While both were highly selective, all though entirely different types of interdiction measures, each interdiction policy was carefully tailored to precisely meet the political and military demands placed on our respective decision makers during each critical period.

b. Claims of Interference with
Navigation on the High Seas

During both the Cuban missile crisis and the current United States mining campaign, Communist claims criticizing

It will be noted that the above is a summary of the

and is not a

It is the policy of the Commission to have the

South American Division in the United States of

South America, the United States of South America

Division, South American Division, United States of

South American Division, United States of South America

South American Division, United States of

South American Division, United States of South America

South American Division, United States of South America

South American Division, United States of South America

South American Division, United States of South America

South American Division, United States of South America

South American Division, United States of South America

South American Division, United States of South America

South American Division, United States of South America

South American Division, United States of South America

South American Division, United States of South America

South American Division, United States of South America

South American Division, United States of South America

South American Division, United States of South America

South American Division, United States of South America

United States interdiction measures for an abridgment of high seas rights of navigation have repeatedly been made. While the Soviet Union, during the Cuban missile crisis found it to its advantage to quickly drop such an untenable assertion, the Russians and the Chinese, more recently, have become increasingly steadfast in their position that their right to unrestricted navigation had been abridged by the U.S. mining measures commencing on May 8, 1972. ²⁶⁰ While the official Chinese statement referred to the American mining measures as an "act of war escalation by U.S. imperialism" which "grossly violates the freedom of international trade," the Soviets, on the other hand, took a more global approach saying that the mining interferes with access of foreign ships to North Vietnamese territorial and inland waters and thus creates a "direct threat to the ships and to the lives of seaman of many states" ²⁶¹

Obviously, the historic concept of "blockade" itself focuses on the very need for interference with the freedom of international navigation of non-belligerent nations by belligerents imposing restrictive measures on non-belligerent commercial traffic navigating on the high seas. That a quarantine or maritime interdiction policy, to a much lesser extent, limits or interferes with international

United States intelligence sources for the purpose
of their own kind of revolution and possibly some
made. While the latter action, during the same period
which found it in the situation to which it had come
an obvious reaction. The situation was the Chinese.
More recently, the Chinese government has been
their position that their right to unrestricted access
has been taken by the U.S. which is
concerned on May 1, 1957. The U.S. has
Chinese government relations in the Chinese which have
been as an act of war according to U.S. officials
which "grossly violates the freedom of international
trade," the Soviet on the other hand, has a
global approach which has been in contact with
access of foreign ships to the Chinese ports, and
and inland waters and from Chinese a Chinese ship to the
ships and to the lines of communication. . . .
Obviously, the Chinese government is not alone
focused on the same line for international relations
does of international relations of non-aligned nations
by belittling the Chinese government's position on non-al-
lignment compared with the position on the right side.
That a guarantee of unified international policy, so a
such great extent, is in line with international

maritime trade should therefore come as no great surprise. For in modern times, the desire by decision makers to impose maritime restrictive measures which lessen the likelihood of the unnecessary destruction of human values while continuing to maintain a high degree of military effectiveness has often been a controlling consideration in resolving a variety of recent crisis management situations.

In discussing the lack of universal or positivistic rules of developed law in the field of maritime restrictive measures, Professor Neil H. Alford has noted that:

. . . it has become almost routine to tolerate naval interferences with shipping in areas in which tensions are great, as in the Formosa Straits or Caribbean, with little more than token protests. Policy makers of states have been conditioned to accept naval interference without a routine violent response although protests may be filed. . . .

This general attitude seems to be based upon four factors: (1) The close control maintained by the state over its naval forces and the high degree of discipline of officers and men which the efficient conduct of naval affairs requires; (2) The usual familiarity of naval officers with international law pertaining to their duties; (3) The lack of an adequate system of international police upon the high seas; and (4) The range of persuasion and coercion of which a naval force is capable. 262

Furthermore, naval interdiction of territorial and inland waters in both South and North Vietnam by surface craft and mine warfare forces did not suddenly commence

with the President's May 8th interdiction order. The practice by both Communist and Allied forces of mining inland and territorial waters had long been in effect.

As was pointed out by Secretary of Defense Melvin Laird in his press conference of May 10, 1972:

The situation is such that mines have been used by the enemy in the South and in tributaries and rivers in the South over a period of [years]. We have had damage done to [our] ships from mines that have been laid by the North Vietnamese. These mines that have been placed in those particular entrances to river facilities and in other areas of the South. . . . 263

Furthermore, while the observance of the rights of foreign vessels to engage in international trade and to obtain access to a nation's territorial waters has long been recognized, these rights are not considered to be absolute. 264 For instance, while the right of innocent passage of an international strait, which may also be part of a nation's territorial sea is generally recognized as a right of navigation, this right as to all types of cargoes and craft, is not without restriction. A coastal state may, for instance, without discrimination temporarily suspend in "specified areas" of its territorial sea, the right of innocent passage of foreign ships if such

suspension is essential for the protection of its security. ²⁶⁵ Commencing in 1965, such measures were employed by the South Vietnamese to prevent infiltration of war goods by sea and to subject all vessels "not clearly engaged in innocent passage" to visit and search procedures.

It would therefore seem that while in both the Cuban missile crisis and in the current North Vietnamese mining interdiction campaign, protests have been raised by Communist countries with regard to U.S. interference with foreign shipping, the controlling consideration is not so much a question of slavishly responding to such protests, but of instead avoiding the type of interdiction measures which, under the circumstances, are the most likely to provoke an uncontrolled confrontation in the first place.

C. Claims of Unlawful, Unilateral
Imposition of Maritime Blockade

As was the case during the Cuban crisis, claims pertaining to the unlawful, unilateral imposition of the current U.S. mining interdiction campaign appear to fall into two general categories. The first category of claims which favors the condemnation of current U.S.

organization is essential for the protection of the
activity. 222. Commission in 1911, and various years
employed in the same position to various positions
of our school by the law to protect all schools and schools
engaged in important matters of state and state government.
It would therefore seem that while in the same
class of cases and in the same school, various cases
interference, various, various, various, various, various
committee with regard to the various cases and cases
advising the various committee is not so much a
question of strictly technical in fact, but of
interests, the fact of technical matters being
under the circumstances, and the fact of technical matters
understanding and understanding in the same class.

II. Status of the various cases

Provisional of the various cases

As was the fact, the fact, the fact, the fact, the fact
pertaining to the various cases, various cases, various cases
the various cases, various cases, various cases, various cases
fall into the various cases, the fact of the fact of the fact
cases, various cases, various cases, various cases, various cases

mining measures arises from intense domestic criticism of the President's action and holds that since there has been no "Declaration of War", there can be no lawful interdiction because one of the essential elements of a lawful blockade is lacking. The second category of claims favors castigating the United States because "blockade" is one of the sanctions specifically contained in Article 42 of the U.N. Charter as a measure which may only be imposed by the Security Council in order to lawfully maintain or restore international peace and security.

As for the first claim asserting that there must be a declaration of war in order to support the President's mining interdiction measures, there would appear to be at least two apparent replies. First, a declaration of war is not required since, in the words of Professor John Norton Moore, the "applicability of the law of blockade depends on the factual existence of a state of internal hostilities and does not require a formal declaration of war" as, for example, was the case during the Korean "police action" when the U.S. maintained a blockade along the entire Korean coastline. 266 Second, the mining interdiction measures which the President ordered taken on May 8, 1972 did not constitute a blockade since these measures were exclusively limited to North Vietnam's "internal and claimed territorial waters" and did not purport to authorize measures traditionally associated with blockade

such as visit and search upon the high seas. 267

This latter supportive reasoning would seem to be especially valid since the Cuban quarantine-interdiction, long since recognized as a tightly controlled and moderated interdiction measure, was not considered by many authorities to be a blockade in the legal sense while nevertheless making significantly broader claims than the current U.S. mining interdiction campaign in North Vietnam. In sharp contrast to the Cuban quarantine, which included provisions for stopping, warning, visiting and searching foreign vessels on the high seas, the current mining interdiction campaign has made virtually no claims whatsoever as to high seas merchant shipping except to provide specific warnings to foreign vessels which may be approaching mined conditions in North Vietnam's internal or claimed territorial waters.

As to the second category of claims relating to the issue of whether the United States has unilaterally imposed a sanction which, under Article 42 of the U.N. Charter, may only be collectively imposed by the Security Council - - the answer would appear to lie in the interpretation of Article 42 itself. Regrettably, Article 42 has itself been criticized as representing one of the Charter's most notorious examples of vague wording

such as visit and return from the city, 1901
This latter movement is somewhat more to be
especially, with regard to the movement of
from, from which is considered as a direct movement and
moderate, international movement, and not completely
by many authorities as to a movement in the form
some, with considerable and with some, in the
claim that the country is, in the form of
concerns in the form of, in the form of, in the
China, particularly, with regard to the movement,
writing, which is, in the form of, in the form of
high, with, the movement, in the form of, in the form of
made, with, in the form of, in the form of, in the form of
with, in the form of, in the form of, in the form of
to, in the form of, in the form of, in the form of
condition, in the form of, in the form of, in the form of
international, in the form of, in the form of, in the form of
is, in the form of, in the form of, in the form of
the, in the form of, in the form of, in the form of, in the form of
formed, in the form of, in the form of, in the form of, in the form of
China, in the form of, in the form of, in the form of, in the form of
Beijing, in the form of, in the form of, in the form of, in the form of
the, in the form of, in the form of, in the form of, in the form of
which, in the form of, in the form of, in the form of, in the form of
one of the, in the form of, in the form of, in the form of, in the form of

and bad draftsmanship. ²⁶⁸ It is also by no means clear whether the drafters of the Charter intended the maritime restrictive measure of "blockade" to be imposed solely by the Security Council as opposed to permitting individual member states to unilaterally impose such a sanction under Article 51 of the Charter.

The pertinent portions of Article 42 provide in part that the Security Council "may take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of members of the United Nations." (Emphasis added). While such a sanction may be imposed by a collectivity of member nations pursuant to Article 42, it does not follow that individual member nations themselves are precluded from utilizing blockade as a permissible self-defense measure. Such a conclusion would seem to be supported by the observation that Article 51 of the Charter preserves to the individual member states the inherent right of self-defense if an armed attack occurs and that the permissible objects of self-defense as well as the Charter's goals of maintaining international peace and security would be defeated if an effective and value conserving sanction such as blockade or maritime-interdiction were denied to

and not systematically. It is also by no means clear

whether the desire for the Council's assistance and assistance
respective means of "action" in the Council itself by
the Security Council as opposed to particular individual

member states is sufficiently limited and consistent

under Article 21 of the Charter.

The purpose of Article 21 is to provide a basis

that the Security Council "may take such action as it

may or take for the purpose of maintaining or restoring

peace and security. Such action

may include demonstration, blockade, and other measures

by air, sea, or land forces or agents of the United

Nations." (Emphasis added.) While such a provision may

be imposed by a collection of member states, it is

Article 21. It does not follow that Article 21 means action

conducted by a collection of member states, or a

collection of member states, or a collection of member states

to be imposed by the member states, and Article 21 of the

Charter provides for the Security Council to take such

and kind of action as it may deem appropriate and that

the member states of the United Nations as well as the

case with a collection of member states, and Article 21

would be satisfied if it is satisfied by the member states

for such as Article 21 of the Charter, and Article 21

a member state in its exercise of its inherent right of self-defense under Article 51. To hold otherwise would seem to invite individual member states to exercise their right of self-defense through alternative albeit more destructive means not expressly contained in Article 42.

Finally, the view expressed by Professor W.T. Mallison as to the desirability of keeping maritime restrictive measures fully available for use by nations both individually and collectively would appear to be well taken when Professor Mallison observes that: .

A careful legal appraisal should avoid automatically ruling out the drastically restricted use of naval power either in limited war or coercive situations short of war. Whether it is termed "limited naval blockade," "quarantine-interdiction," . . . or given another label, one should be slow to condemn as illegal such limited measures especially when they are used to maintain world public order. ²⁶⁹

2. Significant Differences Between the 1962 Cuban Missile Quarantine and the Present U.S. Mining Interdiction Campaign

a. Nature of Objectives

Unlike the Cuban missile crisis of 1962 where the principal U.S. objective was the total removal of fewer

than fifty offensive Soviet missiles from the Soviet Union's "host state," the current mining interdiction of North Vietnam is a large scale and comprehensive attempt to prevent the delivery of all supplies to an enemy presently engaging in offensive operations against the United States and its South Vietnamese ally. While the United States had also announced the important objective of preventing the further introduction of offensive missiles into Cuba, the paramount U.S. concern was not the presence of Soviet missiles in transit on the high seas, but the elimination of those nearly operational missiles which were already in place on Cuban soil. Since the United States could not, short of an invasion, effectively neutralize the offensive missiles already in place, it became the primary objective of President Kennedy's Proclamation to induce negotiations with the Soviet Union for the removal of this obvious threat to the American heartland. The Soviet Union as the manufacturer, shipper and "consignee" of these missiles was also the intended recipient and user of these weapons. Therefore, it was the Soviet Union and not Cuba which was the real party in interest.

The present U.S. mining interdiction, on the other hand, is principally directed against North Vietnam as a

that this offensive design against the British
Colonial Government, the Government of India
of India is a direct result of the
efforts to suppress the freedom of all peoples to
enjoy freedom, including in particular the
the British Empire and the British Commonwealth.
the British Empire has also been the
objective of the British Government's
of British Empire, the British Government
and the British Government is the
the British Empire, the British Government
operational British Empire, the British
will. Since the British Empire, the British
International, the British Empire, the British
British Empire, the British Empire, the British
British Empire, the British Empire, the British
with the British Empire, the British
British Empire, the British Empire, the British
the British Empire, the British Empire, the British
was also the British Empire, the British
Therefore, it was the British Empire, the British
was the last party in the world.
The British Empire, the British Empire, the British
part, in particular, the British Empire, the British

target state, and not those nations, such as the Soviet Union and China, which are delivering the bulk of North Vietnam's military and civilian supplies. Therefore, the current U.S. mining campaign has not been instituted for the removal of any offensive weapons but for the prevention and disruption of their supply. Since the United States has made it clear that it is the North Vietnamese which are considered the aggressors and not the nations providing war materials to that country, the objectives of the current mining interdiction measure are controlled by the U.S. desire to exert the strongest pressures possible on its adversary while attempting to avoid altogether any direct confrontation with those nations providing North Vietnam with its supplies.

Thus, the current decision by the United states to limit its actions to selective mining of North Vietnam's waters whereby foreign shipping nations can chose to avoid such a danger, has totally eliminated the necessity of instituting measures similar to those required during the Cuban missile crisis requiring the confrontation and searching of foreign shipping while still in transit on the high seas. Finally the nature of the ultimate objectives of the Cuban quarantine which in 1962 was principally limited to a massive type of offensive weapon and those objectives sought during the current

mining campaign are, in themselves, exactly opposite:

In Cuba, the U.S. objective was to prevent the possibility of a war from ever beginning while in North Vietnam, the U.S. objective is to bring an existing war to its final end.

b. Scope of Operations

Any comparison of the significant differences between the scope of the naval interdiction operations conducted in Cuba in 1962 and of those commenced in North Vietnam ten years later, would have to center around the relatively narrow limits imposed by U.S. decision makers as to the interception of "offensive cargoes" which were subject to the 1962 quarantine in the Carribean and the prevention of the delivery of "any supplies" in 1972 to our foes in North Vietnam.

In President Kennedy's Cuban Proclamation, the following supplies were declared to be prohibited materiel:

Surface-to-surface missiles; bombers aircraft; bombs; air to surface rockets and guided missiles; warheads for any of the above weapons; mechanical or electrical equipment to support or operate the above items and any other classes of materiel designated by the Secretary of Defense. 270

As a quick review of this list of prohibited materiel readily discloses, virtually all of the items which were subject to quarantine were massive pieces of Soviet weaponry. In North Vietnam, on the other hand, a broad array of smaller sized munitions and war materiel such as small caliber ammunition, weapons, grenades and the like were either being shipped in vessels which looked alike, or mixed together with Soviet bloc shipments including heavy military equipment and bulky consumer goods. Therefore, aerial detection of vessels believed to be carrying these mixed cargoes to North Vietnam, would not have yielded the same precise information as to the quantity and quality of the offensive weapons being carried by merchant vessels as was provided United States decision makers during the Cuban missile crisis of 1962. Accordingly, the scope of naval interdiction operations currently being conducted in North Vietnam must, of necessity, be much broader than the Cuban quarantine since selective interception of Soviet and Communist bloc maritime traffic on the high seas is not politically feasible and the areas of strategic significance include, at the present time, at least seven North Vietnamese Ports and a number of inland canals and tributaries.

The reason the United States has been required to

[illegible]

prohibit all foreign nations from delivering seaborne supplies to North Vietnam has been pointed out by Deputy Secretary of Defense Kenneth Rush during a May 9th television interview, when the Secretary said:

Yes, we're saying that we cannot distinguish between ships that carry munitions of war and ships that might be carrying food. Therefore, we cannot allow any cargoes to reach shore. ²⁷¹
(Emphasis added).

Because the United States is compelled to deny the North Vietnamese all imported materials, the effects of the U.S. mining interdiction are felt equally among the military and civilian segments of the North Vietnamese population. However, before scorn and criticism is heaped upon American decision makers for arriving at a mining interdiction policy which might be criticized by some as an excessively harsh and inhumane decision to deprive the North Vietnamese civilian population of needed fuel, clothing and foodstuffs, ²⁷² it should be pointed out that militarily speaking, the deprivation of civilian supplies is considered to be the very function of a blockade or maritime-interdiction since it forces an enemy to ration, divert or otherwise conserve his existing war supplies and scarce natural resources. For instance, during the Korean War, the

United Nations Command prohibited coastal as well as deep-sea fishing by the North Koreans. The principal reason for justifying such a prohibition was "that this sea food was legitimate contraband and should be stringently denied [to] the Communists. The restriction on fishing by the U.N. blockading force would seriously add to the Communist logistics problems ashore, and force them to import fish from Chinese and Russian sources." 273

In much the same way that the U.N. maritime restrictions caused the North Korean Communists to seek foodstuffs from the Soviets and the Chinese in lieu of receiving weapons which would have ordinarily occupied the same merchant vessel's cargo space, the current U.S. mining campaign may produce the same type of results although it is principally the heavy weapons, war materials and fuel supplies being shipped to North Vietnam by sea which has caused the United States to institute its present interdiction measures.

In any event, despite the significant differences between the naval interdiction operations which were conducted in Cuba in 1962 and those which are presently being conducted in North Vietnam, there is a common thread running throughout the two measures which is that they both have contained within them carefully imposed limitations which were incorporated by U.S. decision makers in order

to achieve military and political effectiveness while attempting to avoid excessive burdens or irreparable harm for each affected country's non-combatant population.

c. Duration of the Campaign

Perhaps the most obvious difference between the 1962 Cuban quarantine-interdiction and the current U.S. mining campaign is the amount of time taken to implement and successfully complete each of these operations.

In the case of the Cuban missile crisis, President Kennedy issued his Proclamation on October 23, 1962 to become effective at 2:00 P.M. on October 24th, Greenwich time. Within three days after the commencement of the quarantine, a series of letters was exchanged between President Kennedy and Chairman Khrushchev, whereby it was agreed that the Soviets would dismantle their offensive weapons systems and return them to the Soviet Union.²⁷⁴

On November 2nd, the President made an interim report to the American people wherein he stated that aerial photographs indicated that the Soviet type offensive missiles had been dismantled and the Cuban missile sites were being destroyed.²⁷⁵ Subsequently, United States Naval forces verified that various "homeward bound" Soviet

channel is the number of the data to be transmitted.

vessels were carrying what appeared to be offensive type missiles or their supporting components as deck cargo.²⁷⁶ These Soviet vessels were visually observed to be carrying forty-two crates which appeared to contain the missiles or related equipment. ²⁷⁷ Thereafter, the quarantine was terminated on November 21, 1962 when President Kennedy received assurances from Chairman Khrushchev that the remaining Soviet jet bombers would be withdrawn within thirty days. The U.S. Cuban quarantine was therefore terminated in less than a months time after it had started with a peak military operative period lasting less than ten days.

By contrast, the duration of the U.S. mining interdiction measures conducted in North Vietnam's territorial waters has, as of this writing, already lasted over three months and will not be considered to have had its intended effect until six months from the date of its inception. ²⁷⁸ While the total time which the U.S. mining interdiction will remain in effect is highly conjectural, it certainly can be said , at this point in time, that its duration and effects will outlast those of the Cuban crisis by a factor of at least five to ten times.

with a good military reputation during the war
participated in June 1944 a meeting with the
British Army, the U.S. Marine Corps and the
Canadian Forces for the purpose of discussing
military cooperation between the three
services. The meeting was held in the
British Embassy in Washington, D.C. and was
chaired by the British Ambassador, Sir
John Gavan Duffy. The meeting was attended
by the following representatives:

B. Evolutionary Trends Arising From the
Circumstances Surrounding the Current
U.S. Mining Interdiction Campaign

1. Localization of Impact

One of the requirements associated with the "traditional law of blockade" embodied in the Declaration of Paris of 1856 and the Declaration of London of 1909 was that the blockading forces must have been deemed capable of enforcing a continuously effective interdiction measure which prevented both the entry and exit of ships from the blockaded area. ²⁷⁹ The historic concept associated with this requirement of "effectiveness" was commonly interpreted to require an indeterminate number of ships of war so situated as to bring about a reasonable expectation that a vessel seeking to breach the blockade would probably be captured. ²⁸⁰

The early nineteenth century situation usually associated with the maintenance of a continuous force capable of blockading a given geographic area was a cordon of surface cruisers hovering a few miles off the enemy's coast. It was, at one time, even insisted that a "closed" or stationary cordon as distinguished from a cruising

patrol was essential in order to maintain the requisite degree of effectiveness of a naval blockade. ²⁸¹ The legal requirements for the so-called "close in" blockade were principally formulated and advanced by the United States and British strategists in an effort to minimize the effects of third party nations attempting to interfere with neutral American and British shipping.

However, after the experiences of two World Wars which saw the major powers introduce and later perfect the so-called "long distance blockade" - - which relied heavily upon a combination of mine fields, surface patrols and associated measures - - the future utilization and success of the close in type blockade was thought to be virtually eliminated. ²⁸² This alteration in the traditional concepts pertaining to the "close in" blockade became necessary because of the extended range of shore artillery batteries, the emergence of fast torpedo boats and the development of long range aircraft and submarines. Any attempt for a blockading surface force to try to maintain a close in type blockade against the modern weapons of the future, was thought to be not only an economically, unworkable measure, but also a militarily disastrous course of action to undertake. Therefore, only broad based, long distance interdiction measures were believed to be on the

period was recorded in order to establish the magnitude
degree of effectiveness of the various measures
level measurements for the purpose of determining
were primarily concerned with the degree of
Station and other measures in order to indicate
the effects of these measures relative to the
with various factors and other elements.

However, after the completion of the first year
which was the first year of the study, the
so-called "low altitude" station - a station which
was a combination of the first and second stations and
associated station - the first station was removed
of the close in type stations was found to be directly
eliminated, ²⁰ this situation is the result of the

particular to the "close in" station which was
because of the removal of the station which was
the removal of the first station and the removal of
low range station and station, the station was
discontinued station found to be directly - since it
type station which was removed at the time
was found to be not only an unnecessary station
measure, but also a station which was not
action to understand the station only found to be
distance between station and station to be the

wave of the future. To a certain extent this prediction was accurately borne out since the only reported instance of a "close in" type blockade during the Second World War was that naval interdiction measure instituted by the Soviet Union against Finland in the Russo-Finnish War of 1939. 283

However, the Korean conflict saw a resumption of the traditional type of close in coastal blockade principally because the United States possessed air and naval superiority and the Russians, who were in effect fighting the war by proxy, chose not to introduce any of their air or submarine forces into the conflict. 284

However, after the passage of a decade of development in the fields of long range bombers and intercontinental ballistic missile delivery systems, the likelihood of the reapplication of a blockade, in any form, was thought to be highly unlikely by military and civilian defense planners since the outcome of any nuclear scale conflict would be decided in only a fraction of the time necessary to even begin a blockade.

However, the 1962 Cuban quarantine-interdiction re-established the validity of the maritime interdiction process as a measure having great potential for use in either a "limited war" situation or as a "measure short

ways of the future. It is a matter of fact that the
the economic basis of the state is only a part of the
of a "class in" the state and the state is not
was that great revolution was not limited to the
Soviet Union which is the only state in the world

1917, 1918

... However, the Soviet Union is a country of the
traditional form of state is not a modern state
because the Soviet Union is not a modern state
it is not a modern state, and it is not a modern state
by force, which is a modern state of the world. It is not
modern form and the world.

... However, from the point of view of the
is the state of the world and the world
believe in the state of the world, the state of the
revolution of a state. It is not a modern state
be a state of the world and the world
are since the state of the world is not a modern state
will be a state of the world and the world
to even be a state.

... However, the state of the world is not a modern state
to be a state of the world and the world
because it is a state of the world and the world
which is a state of the world and the world

of war."

During the Cuban missile quarantine, not only were claims pertaining to the exclusion of prohibited subject matter carefully limited, but claims pertaining to the location of any possible areas of maritime confrontation were similarly reduced. Unlike the "long distance" type blockades of World War I and II, where throughout every part of the world, maritime commerce was subject to sweeping controls and tight restrictions, in Cuba, on the other hand, the United States chose merely to designate a single "interception zone" in the Caribbean Ocean where only those ships which might be carrying Soviet offensive missiles and aircraft could be stopped, boarded or inspected.

A continuation of the trend which appears to have evolved from the concept of limited inspection zones or "maritime confrontation areas" and which was embodied in the Cuban missile Proclamation has also been incorporated in President Nixon's mining interdiction order of 1972 which limits U.S. offensive measures to the "internal and claimed territorial waters of North Vietnam" while avoiding altogether any possible maritime confrontation on the high seas. By carefully limiting the scope of these mining measures to seven North Vietnamese ports and their assoc-

During the Cuban missile crisis, the only way
of this possibility is the question of whether or not
nuclear warheads could be launched from the
location of any possible source of nuclear radiation
were similarly possible. During the Cuban crisis

type situation of 1962, the I and II, both of which
every part of the world, including the United States
to prevent further and more serious damage to the
on the other hand, the United States could easily to
destroy a single "intermediate" base in the Caribbean
Ocean were only those who could also be serious
border between the United States and the Soviet Union.
border of the United States.

A comparison of the two types of nuclear warheads is
evolved from the amount of nuclear radiation which is
thermal radiation from the sun and which was released in
the Cuban missile crisis. The Cuban missile crisis
in October 1962, the United States launched a series of
which their first nuclear warheads in the Atlantic and
obtained territorial control of the United States. With these
two missiles, the United States could control the
high seas, by launching missiles from the United States
against the Soviet Union. The United States and the Soviet Union

iated inland canals and tributaries, the United States has significantly reduced the area of maritime impact pertaining to foreign shipping and has narrowed the scope of those "confrontation" areas affected to nearly coincide with those of the old-style "close in" type blockade. It would indeed be difficult to imagine just how U.S. decision makers could have designed a maritime interdiction measure with a smaller zone of impact and still retained the high degree of military effectiveness which has thus far been achieved. By carefully limiting the areas which have been mined to North Vietnamese inland and claimed territorial waters, the United States has insured that neither foreign vessels transiting the areas adjacent to North Vietnam nor those foreign vessels bound for that country's mined harbors and port facilities are in any way interfered with while they continue to remain on the high seas.

2. Degree of Notification

Under the historic concepts associated with maritime blockade, a maritime interdiction measure did not become effective until the appropriate notification of the "Blocade Declaration" had been accurately communicated

stated that Canada and the United States
 has accordingly reduced the size of certain forces
 pertaining to foreign relations and has narrowed the scope
 of those "contingents" which are allowed to assist in
 with those of the all-style "class in type elements.
 It would indeed be difficult to imagine how the
 decision makers could have reached a similar conclusion
 because with a smaller force of troops and still reduced
 the high degree of military effectiveness which has been
 far from achieved. In carefully studying the various
 have been aimed to North Vietnam and the other
 political system, the United States has ignored the
 neither foreign nor domestic conditions the great extent to
 North Vietnam and those foreign vessels bound for
 country's armed forces and port facilities are in fact
 interested and while their position is weak on the
 side.

2. System of Position

Under the historic concept associated with military
 blockade, a complete restriction against all not
 effective until the appropriate condition of the
 "Blockade Decision" has been successfully communicated

to the proper port, consular and diplomatic authorities.²⁸⁵ While some nations such as France and Italy had traditionally ordered their blockading men-of-war to board every approaching neutral vessel and notify her of the establishment of the blockade, other countries including Japan, Great Britain and the United States, did not consider such individual notification to be essential for the effective institution of a blockade. ²⁸⁶

With the advent of the long distance type blockade which was employed during the course of World Wars I and II, the ability of the blockading nation concerned to give individual notification to each vessel approaching a blockaded area was determined to be totally infeasible. This lack of ability to provide specific warning to approaching vessels not only stemmed from the enormous expanses of ocean areas which were declared "war zones,"²⁸⁷ but it also stemmed from the fact that much of these ocean areas were being blockaded almost exclusively through the use of an entirely uncommunicative instrumentality called the naval magnetic mine.

Furthermore, once hostilities had commenced during such unlimited wartime situations (as occurred in the Pacific in December, 1941), not only did the combatants fail to describe blockaded areas in terms of the outside

geographic perimeter-limits of these enormous ocean areas called "war zones," but the entire theaters of operation themselves were described in such sweeping terms as to constitute no notification whatsoever. For instance, the Secret U.S. message sent on December 7, 1941 to EXECUTE AGAINST JAPAN UNRESTRICTED AIR AND SUBMARINE WARFARE, included no provision whatsoever concerning operational areas except that for the purpose of command control against Japan, all of the Pacific Ocean areas were declared a theater of operations.²⁸⁸ As a result of the unrestricted U.S. Naval wartime policy in the Pacific, American submarines and aircraft established massive blockades throughout Japan's inland and territorial waters as well as in Japanese controlled ocean and river areas.²⁸⁹ In virtually every case, the establishment of the blockaded areas through the use of submarine and aerial laid mines was totally unannounced, and it remained for a passing ship or barge to subsequently verify the blockading mine field's presence and precise location.

In sharp contrast to the establishment of the far-flung and unannounced Pacific mining blockades of World War II, there has evolved from the Cuban and North Vietnamese maritime restrictive measures, communications techniques which have provided, under the circumstances, the highest degree of notification believed to be attainable .

[illegible]

During the Cuban quarantine, both U.S. air and naval craft were used to intercept those Soviet controlled merchant vessels headed for the quarantine zone which had not previously been instructed by the Soviet Union to return home. During the Cuban crisis, notification of the establishment of the U.S. quarantine-interdiction was provided by special and general communications techniques on a scale never before seen in the history of naval blockade. Not only were individual Soviet chartered and controlled surface vessels selectively notified of the existence of the Cuban quarantine by voice and by visual communications, but submerged Soviet submarines as well were signaled through the use of harmless underwater explosive sound signals utilizing the international recognition code "IDKCA" meaning "rise to the surface." 290

While it would seem hard to improve upon the extensive and carefully planned communication and notification techniques employed by the United States during the Cuban quarantine, it would now appear that the United States has, because of its advance lead time and the known seriousness of its present mining measures, provided for even more in depth notification procedures during its North Vietnamese mining operation than was provided during the 1962 Cuban "blockade".

During the Cuban operations, over 100,000 tons of cargo

craft were used to transport these goods controlled

merchant vessels headed for the operations zone which

had not previously been attacked by the Soviet Union as

return home. During the Cuban crisis, notification of the

establishment of the U.S. Maritime Administration was

provided by special and general communication facilities

on a scale never before seen in the history of naval

blockade. Not only were individual vessels observed and

controlled surface vessels radioactively notified of the

existence of the Cuban operation by radio and by signal

communications, but submarine Soviet submarines as well

were alerted through the use of electronic intercept

explosive sound signals utilized the international code-

notation code "THREAT" meaning "time to the quarter" and

While it would seem that to improve upon the extensive

and carefully planned communication and coordination tech-

niques employed by the United States during the Cuban

operation, it would now appear that the United States

has, because of its success that time and the Soviet Union's

need of its present aging submarine, provided for some

in depth notification procedures under the North Atlantic

training operation that was provided during the 1961 Cuban

"blockade".

This is because not only were the affected Communist vessels located in North Vietnamese ports given a three day "grace period" before the mines were activated, but because detailed notification of the planned U.S. mining measures was also communicated to the nations concerned before the President had even concluded his May 8th presentation. 291 It was even believed by some sources that the Soviets and possibly the Chinese were provided with some broad based indication of the measures which the U.S. might have planned since modern diplomatic contacts are "virtually continuous" and the United States, in private talks with the Kremlin, might have "conditioned" the Soviet's reaction to a possible mining interdiction. 292

Once the North Vietnamese mining interdiction was commenced, United States vessels were instructed to "use their best efforts to insure that all vessels transiting the high seas in this area are notified by appropriate signals of the . . . measures being undertaken in the internal and claimed territorial waters of the Democratic Republic of Vietnam." 293

These efforts, as previously noted, included having personnel aboard U.S. vessels stationed on the "notification line" who could "warn away" any merchant ship from these dangerous waters by utilizing ten spoken languages in addition

This is because not only were the affected communities
located in what was known as the "Red Zone", a large area
"once known" before the area was isolated, but because
detailed notification of the situation was given to the
was also communicated to the various concerned parties and
President and even included his New Year message.
It was even believed by some sources that the United States
possibly the Chinese were involved with some kind of
indication of the measures which would be taken in the future
since such a situation was not "officially recognized".
and the United States in future talks with the People's
have "confirmed" the United States' position on the matter.
In addition, the

Once the United States' position was
confirmed, United States officials were instructed to
their best efforts to ensure that all United States
high level in this area and within the United States
of the... a number of other... in the United States
claimed territorial waters of the United States
Vietnam, the

These efforts, as previously noted, included regular
personnel about 500, which is believed to be the
line of the United States, and which will be
American waters for the United States in addition

to existing international signal codes. 294

The high degree of complexity and preparation associated with manning and operating such a "notification line" would be substantial when one realizes that the capability to be able to provide notification in all ten foreign languages was probably within the assigned mission of several of these U.S. notification vessels.

In fact, it would be difficult to imagine any other situation where a country engaged in naval interdiction operations against an enemy then under heavy air and naval attack by forces of the same land had intentionally diverted its own warships in order to give timely warning to vessels of third party countries destined for the mined ports of the enemy and carrying munitions and supplies to that foe. Nevertheless, the United States, in order to minimize excessive domestic criticism, while being ever mindful of North Vietnam's strategic power alignments, chose this method as the most prudent and restrained course of action possible by imposing such onerous notification requirements upon elements of its own forces. Never in the history of naval warfare has a nation gone to such lengths to give detailed notification of dangerous conditions to those "non-belligerent" third party countries known to have been providing war materials to the notifying nations foe.

to establish international naval bases.

The high degree of complexity and interdependence

associated with building and operating such a 'notification line' would be substantial when one considers that the very

ability to be able to provide notification is all

ten foreign languages was probably within the realm

mission of several of these U.S. notification vessels.

In fact, it would be difficult to inspect any other

situation where a country engaged in naval inspection

operations against an enemy then under heavy air and

naval attack by forces of the same level and intent.

diverted its own warships in order to give timely warning

to vessels of this navy countries destined for the main

ports of the enemy and carrying warships and supplies to

that foe. Nevertheless, the United States, in order to

minimize extensive domestic criticism, while being ever

mindful of North Vietnam's strategic power alignments,

chose this method as the most prudent and restrained

course of action possible by imposing such onerous

notification requirements upon elements of its own forces.

Never in the history of naval warfare has a nation come to

such lengths to give delayed notification of dangerous

conditions to those 'non-belligerent' third party countries

known to have been providing war materials to the notify-

ing nations for.

3. Avoidance of Unnecessary Confrontation

Perhaps the most significant feature of the current mining campaign is the selective employment of passive naval weapons to interdict the delivery of all seaborne supplies. Through the employment of carefully laid mine fields, the United States has placed North Vietnam's maritime suppliers in a position which requires them to make one of three choices: The first, to attempt to "run the blockade" and risk possible damage or destruction to their ships as well as to risk injury or death to their crews; the second, to seek alternate unmined ports of entry for transshipment of cargoes by overland routes and the third, to undertake to make no shipments to North Vietnam whatsoever. Of the three principal courses open to the countries which have been making seaborne deliveries to North Vietnam, the first and the third choices are clearly the most unpalatable, leaving the second choice as the most logical course of action to be undertaken. Regardless of which course of action was undertaken by North Vietnam's major seaborne suppliers, the initial choice in every case was for each cargo carrying nation involved to make, rather than the first post-mining move being left up to the United States.

This general built-in delaying feature of "blockade" or "maritime interdiction" which because of its relative

Perhaps the most significant feature of the current mining campaign is the selective employment of passive naval weapons to interdict the delivery of all maritime supplies. Through the employment of carefully laid mine fields, the United States has placed North Vietnam's maritime supply lines in a position which requires them to make one of three choices: The first, to attempt to "run the blockade" and risk possible damage or destruction to their ships as well as to risk injury or death to their crews; the second, to seek alternative means of entry for transportation of cargoes by overland routes and the third, to undertake to make no attempt to North Vietnam whatsoever. Of the three principal courses open to the countries which have been making seaborne deliveries to North Vietnam, the first and the third choices are clearly the most undesirable, leaving the second choice as the most logical course of action to be undertaken. Recognition of which course of action was undertaken by North Vietnam's major seaborne suppliers, the initial choice in every case was for cargo carrying action rather than to make, rather than the first post-rising move being left up to the United States. This general built-in delaying feature of "blockade" or "maritime interdiction" which because of its relative

slowness to operate gives each side time to think, and therefore reduces the risks associated with such an operation, is of critical importance to the decision makers involved in reducing the likelihood that a hasty decision might be forthcoming.

In some cases, the blockading or interdicting nation must also make a decision such as boarding or blocking passage of a vessel. However, it is the blockade-running nation which must first make the key decision to bring about such a confrontation once the blockader's prestige is placed on the line.²⁹⁵ Thus, Mr. L.W. Martin, in his book entitled The Sea in Modern Strategy, has delineated one of the most valuable features of blockades in general and delayed action mining interdiction in particular when he states that: "Blockade thus has one of the most desirable characteristics in a technique of crisis management, that of transferring the onus of escalation to the other side."²⁹⁶

Indeed, with the computers in the newly sown mines automatically activating their arming devices after the passage of three "day light periods," all that was required of the United States if it wanted to forego the possibility of the offloading of supplies by North Vietnamese lighters, was to sit back and see if any foreign vessels would attempt to confront the mines which it had planted.

allowance to provide with each side of India, and
therefore before the state is admitted with an open-
action, is of critical importance in the Indian sphere
involved in reducing the situation that a large decision
might be forthcoming.

In some cases, the possibility of intervention
must also have a decision made in regard to the
possibility of a vessel. However, it is the responsibility
action which must first have the decision to make
about such a commitment from the country's position
is placed on the line. The U.S. position is

the fact that the U.S. is in a position to make
one of the most serious forms of blockade in general
and delayed action which intervention is possible
he states that. However, the fact of the matter is
characteristic in a number of other countries, and it
transferring the case of intervention to the other side.

Indeed, the country in the world now
international situation that India has been
better of than the other side, and the
of the United States is to be decided on the
of the situation of supplies in the Indian sphere,
yet to its back and one of the most serious
to control the situation in the world.

Of course, under the circumstances of the current mining interdiction, every effort was made to minimize any possible superpower confrontation. For this reason, the U.S. mines were exclusively sown in North Vietnam's territorial and inland waters in an effort to preclude any possible surface craft confrontation or possible mine damage or losses to foreign vessels engaged in navigation on the high seas.

It should also be remembered, however, that during the period that the Cuban quarantine was effective (October 24th to November 2nd 1962) fifty-five merchant ships were scrutinized by the United States before they were allowed to proceed. ²⁹⁷ Among them, was the Soviet tanker Bucharest which was intercepted on October 25, 1962 and visually inspected while the Lebanese ship Marcula was actually stopped, boarded and searched by units of the United States Navy's quarantine force on the following day. ²⁹⁸

The United States, not wanting to even hint at the possibility of such a high seas interception of Communist bloc commerce, took great pains to emphasize that North Vietnam was the sole intended target and, in the words of President Nixon's May 8th address, "these actions are not directed against any other nation." ²⁹⁹

It was also for the same reason of attempting to arrive at an effective interdiction policy which was made as

Of course, under the circumstances of the present
when information, which would be helpful
my personal observation and investigation. The fact that
the U.S. Navy was authorized to go to South Vietnam
particular and island waters is an effort to prevent
any possible surface craft investigation of vessels that
escape or losses in South Vietnam waters is necessary
on the high seas.

It should also be pointed out, however, that during the
period that the U.S. Navy was authorized to go to South Vietnam
to November 1967, fifty-five surface ships were
authorized by the United States Navy to go to South Vietnam
to provide. The Navy has the right to go to South Vietnam
which was authorized on October 11, 1967, and which
inspected while the Navy was authorized to go to South Vietnam
excepted, provided and subject to the U.S. Navy's right
Navy's exclusive force on the Vietnam Sea. The
The United States Navy has the right to go to South Vietnam
possibility of such a ship being authorized to go to South Vietnam
like common, that such ships are authorized to go to South Vietnam
Vietnam and the Navy's interest in South Vietnam, in the words of
President Nixon's own statement, "to prevent the loss of
directed against the United States." - VNY
It was also the Navy's interest in South Vietnam in 1967
at an effective investigation while such ships go

inoffensive as possible to third party shippers, that the current mining interdiction measures were devised. However, unlike the Cuban crisis wherein President Kennedy proclaimed a quarantine which included interception, boarding and search orders, in the case of the U.S. mining interdiction in North Vietnamese waters, all descriptive nomenclature such as "blockade", "pacific blockade" or "naval quarantine" was scrupulously avoided.

In noting that some maritime restrictive measures such as 'pacific blockade' have acquired a specific and ascertainable meaning, Mr. L.W. Martin makes the following analytical observation:

Some measures such as 'pacific blockade,' have at times acquired a technical meaning and are recognized to involve certain rules. But the legitimacy of acts of force, at least in the eyes of the lawyers, lies not so much in their intrinsic nature as in the overall circumstances of the case, although certain proportionality [considerations] must be observed. In other words, it is the circumstances of [the] action rather than the precise means employed that determine the legal claim of a state to depict its action as lawful. 300

Finally, Professor John Norton Moore, in analyzing the reasons why President Nixon did not use the term "blockade" in describing his North Vietnamese mining measures has provided us with the following descriptive commentary:

inoffensive as possible to this party system, that the
 current policy intention however were desired. However,
 unlike the Cuban crisis which President Kennedy presided
 a question which included intervention, bombing and action
 orders, in the case of the U.S., which intervention in such
 Vietnamese waters, all unexpected circumstances such as
 "blockade", "partial blockade" or "naval quarantine" was
 scrupulously avoided.

In noting that some earlier tentative measures
 such as 'partial blockade' have been given a specific and
 ascertainable meaning, Mr. L.V. Martin notes the following
 analytical observations:

Some measures such as 'partial blockade' / have to
 first involve a technical meaning and the second
 must involve certain legal aspects. The first is
 any of acts of force, as laid in the way of
 the passage, like one such as their blockade
 nature as in the overall circumstances of the
 case, without certain specifically formal-
 ized and as observed. In other words, it
 is the circumstances of legal action rather
 than the precise means employed that determine
 the legal status of a state in regard to action
 as lawful.

Finally, President John F. Kennedy in realizing the
 reasons why problems arise did not use the term 'blockade'
 in describing his North Vietnamese policy action. He
 provided us with the following definitive commentary:

If, then, the conditions were present for a lawful blockade why was it carefully announced only as an 'interdiction of weapons and supplies?' It was not because the President lacks constitutional authority to institute a blockade. The U.S. action, whether termed 'blockade' or 'interdiction,' was the kind of tactical decision about the conduct of ongoing hostilities which fall within the President's power of Commander-in-Chief. Rather, the decision to avoid the term 'blockade' was part of a series of careful limitations intended to minimize the risk of confrontation with non-belligerents. By speaking only of 'interdiction,' President Nixon avoided inadvertently signalling a wider objective, such as the economic or political subjugation of North Vietnam, which might have been implied by use of the term 'blockade.' 301

It would therefore seem apparent that through the prudent and limited utilization of automatic mines and naval surface craft, the United States has established a highly effective maritime interdiction campaign while simultaneously avoiding any unnecessary confrontation between superpowers and while minimizing the possibility of the unnecessary destruction of a wide range of human values.

4. Modification Of Tactics So As To Moderate The Scope Of Claims

In discussing the difficulties in attempting to impose fixed and unyielding legal doctrine to areas of rapidly developing military technology and tactics such as in the

It, then, the conditions were present for a limited blockade who was it carefully announced only as an 'intention of various and sundry'. It was not because the President lacks constitutional authority to institute a blockade. The U.S. action, whether termed 'blockade' or 'interdiction', was the kind of tactical decision about the conduct of operations hostilities which fell within the President's power of Commander-in-Chief. Further, the action to avoid the term 'blockade' was part of a series of carefully limitations intended to minimize the risk of confrontation with non-belligerents. By so doing only of 'interdiction', President Nixon avoided inadvertently alienating a whole objective, and the economic or political subjugation of North Vietnam, which might have been limited to use of the term 'blockade'. 301

It would therefore seem apparent that through the prudent and limited utilization of economic plans and naval surface craft, the United States has established a highly effective maritime interdiction campaign while simultaneously avoiding any unnecessary confrontation between superpowers and while maintaining the possibility of the unnecessary destruction of a wide range of human values.

4. Modification Of Tactics As To Moderate The Scope Of Claims

In discussing the difficulties in attempting to lower fixed and maintaining level hostilities to areas of readily developed military technology and tactics such as in the

areas of naval blockade and quarantine interdiction, Professor Myres McDougal has observed that:

It was also in response to these changed [blockading] conditions of military technology and combat operations that instrumentalities other than surface cruisers were resorted to for physically controlling the flow of commerce to the enemy. The principal instrumentalities employed for this purpose in the last two World Wars were the mine, the submarine and the aircraft. Frequently all three weapons were utilized to supplement one another. . . . 302

In responding to the proposition advanced by Professor Robert W. Tucker that "[t]he effectiveness required of valid blockades cannot be secured by means violative of other firmly established rules [while] the element of danger associated with an effective blockade is . . . understood in terms of a liability to seizure and eventual condemnation, though not in terms of a liability to destruction [as in the case of mines and submarines] upon entrance into a forbidden area," Professor McDougal has observed that this requirement for all blockading instrumentalities to conform to the blockading standards originally projected for surface squadrons is in effect a comprehensive ban against technological improvements being effectively used in the maritime blockades of the future.

Professor McDougal then continues his rebuttal of Professor Tucker's totally inflexible assertion by observing that:

for it should be evident even upon casual observation that, of itself, a minefield can never, and submarines and aircraft only in very exceptional cases, meet the requirements of a cordon of vessels. The position taken by Professor Tucker would appear to represent an inadequate generalization of past experience and perspectives, and, so far as concerns estimations of probable future practice and decision in comparable contexts, [appears] substantially to have escaped contact with reality. 303

. . . .

To illustrate, with particular reference to the establishment of war zones where stretches of ocean are sown with mines, the important general consideration would seem to be that mines, as an instrumentality of blockade, need not be more destructive of neutral values than surface vessels. More specifically, the strategic importance, in the particular war in question, of the object of stemming the stream of commerce with the enemy; the details of the particular use of mined war zones, including the specific disposition of mines; the economics made possible in time, effort, and commitment of surface craft; the giving or withholding and timing of notification of neutrals - - all appear factors appropriately included in the assaying of reasonableness. Thus, as the Allied Powers used them in the last World Wars, 304 minefields functioned strategically as blockade devices by channeling shipping in particular parts of the ocean to predetermined routes for subjection to contraband and export control procedures. Both effectiveness and minimum destruction [of values] were served by giving notice to neutrals of the extent and location of minefields . . . and of safe passage through them The neutral vessel which ignored the notice and which would presumably do so only if engaged in commerce with the enemy of course became liable to destruction in the minefield. It is . . . only by the examination of the above and other types of detailed factors in the use of minefields as in the use of submarines and aircraft, that rational discriminations can be made as [to] the lawfulness (reasonableness) of particular, newer instrumentalities for securing the requirement of effectiveness in interdiction of passage. 305

For it should be evident that your mental character-
istics, of itself, a relatively new power and
substance and energy, are in very substantial
cases, most of the time, made of a number of people's
the positive ideas by Professor Turner would appear
to represent an important consideration of what
movements and personalities, and so far as concerns
realization of people's ideas, the idea of the
in concrete contact, [unintelligible] to
have actual contact with reality. (2)

[illegible]

In order that the reasonableness of the current U.S. mining interdiction can be evaluated in terms of military effectiveness and minimum destruction of human values, the five factors outlined by Professor McDougal are thought to constitute meaningful and appropriate guidelines from which to evaluate each competing claim.

Factor (1) The Strategic Importance in the
Particular War in Question

The strategic significance and the importance of the U.S. mining interdiction in North Vietnam was stressed by President Nixon during his May 8th address when he stated that:

I have therefore concluded that Hanoi must be denied the weapons and supplies it needs to continue the aggression [since] [a] major portion of the supplies through which the invasion of South Vietnam is being supported [is coming] from the sea. It is essential that this delivery of supplies from the sea be prevented so that North Vietnam cannot continue to resupply both its forces in the field and its logistics base [at home]. 306

Clearly, the strategic importance of the mining interdiction measures which the President commenced on May 8, 1972 were of paramount concern to him as President and to the people of the nation as a whole in endeavoring not only to eliminate all future war supplies from being

In order that the requirements of the current U.S. military information can be included in terms of military effectiveness and minimum destruction of human values, the five factors outlined by Professor Johnson are thought to constitute meaningful and meaningful guidelines from which to evaluate each competing plan.

(1) The Strategic Importance in the Particular War in Question

The strategic importance and the importance of the U.S. military information in South Vietnam are stressed by President Nixon during his May 23 address when he stated that:

I have therefore concluded that such a war as during the Vietnam and anyone is aware of continue the American interest in the portion of the supplies through which the invasion of South Vietnam is being supported [is coming] from the sea. It is essential that this delivery of supplies from the sea be prevented so that South Vietnam cannot continue to support both its forces in the field and its logistic base at home.

Clearly, the strategic importance of the military information stressed since the President's command on May 8, 1971 was of paramount concern to the President and to the people of the nation as a whole in determining not only an ultimate military victory but also

delivered to the enemy but also to bring about the speedy and humane end of the conflict itself.

Factor (2) The Object of Stopping the Stream
of Commerce with the Enemy

As previously noted above, the object of stopping the "stream of commerce" with which the enemy was being supplied was of paramount importance to the United States. The very first paragraph of the President's May 8th address referred to the massive Communist invasion landed five weeks earlier which was made possible by "tanks, artillery, and other advanced weapons supplied to Hanoi by other Communist nations. ³⁰⁷ In addition, the very life blood of the North Vietnamese Communist's mechanized offensive was dependent on 35 to 40 thousand metric tons of petroleum being pumped into its storage areas from those Soviet tankers at Haiphong which had, for years, been providing over 80 per cent of North Vietnam's oil supplies. ³⁰⁸

Factor (3) Details of the Particular Use
of the Mined "War Zones"

Unlike the extensive mine "barrages" employed during

As previously noted above, the extent of flooding
the "stream of commerce" with which the owner was
supplied was of paramount importance in the instant case.
The very first payment of the franchise fee was
addressed directly to the American Commerce Company, Inc.
Five weeks earlier when the bank advised its owner,
further, and other without having received the
by other Commerce parties, it is noted, the
the fact of the bank's payment of the fee was
attention was directed to it in the Commerce's
of payment being made from the bank's account.
those total amounts of payment were not
been received prior to the date of the bank's

World War I and the unlimited naval mine blockades of World War II, the evolutionary trends pertaining to the modern naval interdiction techniques first inaugurated during the Cuban quarantine and subsequently refined in the current U.S. mining interdiction of 1972, show a marked reduction in the size and scope of blockading claims. This reduction in the size and scope of modern interdiction claims is clearly the result of the more moderating influences brought about by the extremely conservative "limited war" and "measures short of war" interdiction techniques which stem from the desire on the part of modern decision makers to minimize excessive or unreasonable areas of confrontation and to avoid the excessive and unwarranted destruction of human resources and associated values.

In order to achieve these more moderate methods of maritime interdiction, the United States has relied upon supply interdiction and embargo techniques which are practices somewhat related to the restrictive measures associated with the traditional concepts of "pacific blockade." However, the emergence of the newer maritime restrictive measures, starting with the development of the quarantine-interdiction, ignored the limiting characteristics of pacific blockade which, if followed slavishly, would not have permitted interference with vessels of

World War I and the United States Navy. Since World War II, the evolutionary trends pertaining to the modern naval interdiction techniques first inaugurated during the Cuban operations and subsequently refined in the current U.S. naval interdiction of 1977, show a marked reduction in the size and scope of modern claims. This reduction in the size and scope of modern interdiction claims is clearly the result of the more moderating influences brought about by the essentially conservative "limited war" and "assured destruction" interdiction techniques which stem from the desire on the part of modern decision makers to minimize excessive or unreasonable areas of confrontation and to avoid the excessive and unwarranted destruction of human resources and associated values.

In order to achieve these more moderate methods of maritime interdiction, the United States has relied upon supply interdiction and related techniques which are practices somewhat related to the restrictive measures associated with the traditional concept of "neutral blockade." However, the essence of the modern maritime restrictive measures, starting with the development of the parasitic-interdiction, limited the restrictive character of passive blockade which, as followed almost invariably, would not have permitted interdictions with vessels of

third party states. Professor Gerhard von Glahn, in his book Law Among Nations has expressed the belief that the evolutionary changes in the laws of naval blockade were accelerated by the Cuban crisis since the utilization of a "quarantine" did not meet the "traditional" standards of international law. In arriving at this conclusion, Professor von Glahn observes that:

The term 'quarantine,' [which] was initially used to describe the action adopted [by the United States] indicated the realization that this was a new method of blockade. Analysis reveals that it falls somewhere between the two traditional types of blockade; it was a pacific blockade in that neither the element of intent for war nor a "state of war" did exist; at the same time, it was a hostile blockade in that the quarantine was to be applied against vessels of a third state. 309

In the most recent evolutionary refinement of the concept of "blockade," the United States, in planning and executing its current North Vietnamese mining interdiction campaign, relied on an assimilation of the practices established in Cuba while further limiting the scope of its claims by substituting as the dominant enforcement device the presence of magnetic mines in lieu of a fleet of intercepting surface cruisers.

third party states. The present document was drawn in his
book Law and Justice the document was written that day
evolutionary changes in the law of civil liberties were
suggested for the future which might be the subject of
a "provisional" bill and that the "provisional" document
of international law, in addition to the document
proposed was also of great value.

The new "provisional" document was written in
the document the author stated in the document
that the document was written in the
and a new method of document. The document
that it is a document which is the subject
of the document. It was a document which
was in the document the subject of the document
was not a document of the document. It was
that it was a document which was the subject
of the document. It was a document which was
the subject of the document. It was a document
which was the subject of the document.

In the present document the document of the
document of the document. The document of the document
document the document which is the subject of the document
document, which is the subject of the document
document in the document which is the subject of the document
document for the document. The document of the document
the document of the document. It is the subject of the document
international document.

Factor (4) Economics Made Possible in Terms of
Time, Effort and the Commitment of
Surface Craft

The evolutionary trends associated with a possible economic saving and the more efficient utilization of available surface craft have not been overriding factors in the planning and execution of recent maritime restrictive measures. If anything, the United States has conspicuously "over deployed" its forces in an attempt to convince apparent "target" nations of the extent of its resolve and commitment. However, in the case of a combined mine-surface craft interdiction measure such as is currently in progress in North Vietnam, there can be no doubt that the employment of significant numbers of sophisticated mines in conjunction with modern surface vessels is consistent with the traditional concepts of "economy of force" in terms of the savings of time, effort and the availability of a reserve of naval forces.

Factor (5) The Giving or Withholding of
Notification to Neutrals

As previously stated, one of the most significant aspects of the Cuban quarantine and the current U.S. mining

Factor (4) Economic Mobilization in Terms of

Time, Effort and the Commitment of

Surface Craft

The evolutionary trends associated with economic

economic saving and the more efficient utilization of

available surface craft have not been overriding factors

in the planning and execution of recent surface warfare

ive measures. It is evident, the United States has conducted

its "best defense" for years in an effort to con-

vince potential "enemy" nations of the extent of its

resolve and commitment. However, in the case of a combined

mine-surface craft interdiction scenario such as is currently

in progress in North Vietnam, there can be no doubt that

the employment of significant numbers of sophisticated mines

in conjunction with modern surface vessels is essential

with the traditional concept of "sweep of force" in terms

of the nature of time, effort and the availability of a

reserve of naval forces.

Factor (5) The Effect of Effort and

Commitment to Results

As previously stated, one of the most significant

aspects of the Cuban intervention was the current U.S. military

interdiction campaign now being conducted is the extensive utilization of elaborate notification measures designed to minimize inadvertent damage or destruction to third party "neutral" shipping values. The extent of the U.S. communication effort both in terms of the notification given as well as its timing, are two of the key indicia pertaining to the increase in the number of moderating measures being adopted as between the "blockading powers vs the "neutral shipping nations" and the extent of the U.S. effort in attempting to convince these third party nations of the reasonableness of U.S. interdiction claims.

In applying these five factors which Professor McDougal has provided for the purposes of assaying the reasonableness of a given interdiction campaign, it is believed that even the most ardent critic of U.S. defense policies would be in accord with the proposition that the evolutionary trends associated with modern methods of naval interdiction have resulted in a substantial modification of tactics and a significant reduction in both the size and scope of claims.

intervention concerning the future conducted in the objective
utilization of objective notification means and methods
to minimize interference damage or disturbance to the
party involved, without injury. The concept of the
communication effort is based on the recognition
given as well as the timely, use of the facilities
pertaining to the progress in the nature of notification
measures being applied as between the "identified" persons
or the "assumed" persons involved, and the extent of the
U.S. effort is estimated to continue until the
nature of the communication of U.S. information is
in applying these five factors which constitute
McDonnell has provided for the purpose of assessing the
reasonableness of a given notification situation. It is
believed that even the most recent crisis of U.S.
defense policies would be in accord with the position
that the evolutionary trends involved with regard
methods of naval intervention have evolved in a manner
that modification of tactics and a significant reduction
in both the size and scope of attack.

C. Value Conserving Considerations Shown During
the 1972 U.S. Mining Interdiction Campaign

1. The Employment of Comprehensive
Warning Measures

As previously mentioned in earlier portions of this thesis, the United States may have employed one of the most elaborate warning techniques during the course of its North Vietnamese mining interdiction as has any nation during the recorded history of maritime blockade. These stringent, self-imposed notification requirements are all the more significant since the so-called "neutral" third party trading nations which were provided such detailed warnings, were in reality, the principal suppliers of North Vietnam's armed forces. Were it not for the comprehensive and timely notification measures employed by the United States, however, the enormous risks involved in such a mining "blockade" would clearly have been multiplied a hundred-fold.

The true measure of the effectiveness of the value conserving considerations embodied in the United States notification techniques is that as of this writing, there has not been a single reported incident of damage or

1. The Improvement of Census
Methods

As previously mentioned in earlier sections of this report, the United States has been making one of the most extensive surveys conducted within the country in its history. The 1971-72 United States Census is the first time the recorded history of census taking. These attempts, self-reported, systematic, and systematic are all the more significant since the so-called census, this early census taking which was involved with detailed statistics, was in 1971, the first census in the United States' census history. There is no in the census and family relationship program and in the United States, however, the census is not in such a kind of "census" with only one page and a limited-601.

The first census of the effectiveness of the census concerning censuses recorded in the United States census is that of the census. This has not been a single census but a series of

destruction to any foreign merchant vessel while the only known casualty which occurred to date was been the underwater damage sustained by a vessel assigned to the United States interdiction forces. 310

By providing detailed notification of the type of mining measures which it intended to employ and by simultaneously coupling this notification to a three day "grace period" in which foreign vessels could enter or depart North Vietnam's mined ports, the United States not only minimized the possible damage or destruction to third party shipping but it also minimized the likelihood of any retaliatory action being taken against the United States by the other superpowers involved.

2. The Exemption of Small Vessels From Maritime Restrictive Measures

Until the advent of the United States decision in Korea to forego the traditional immunity usually accorded small coastal fishing vessels engaged in peaceable fishing operations, United States forces, ever since the turn of the century, had observed the letter and spirit of a 1900 U.S. Supreme Court decision declaring that under the rules of customary international law, such small craft were

destination for any foreign movement would allow the only
known country which continued to have war from the north-
west corner remained in a general position to the United
States Information Council. 212

By providing detailed notification of the type of
interior movement which it intended to employ and by kind-
nessly providing this notification to a group of people
period in which certain vessels would be used to transport
North Vietnam's arms and air, the United States and only
abstained the possible danger or destruction to this
party which has it also indicated the likelihood of
any retaliatory action being taken against the United
States by the other governments involved.

2. The Committee of South Vietnam's Role
in the Vietnam War

Until the advent of the United States mission in
Hanoi to form the traditional military and political
staffs capable of taking over the country in the event of
operations, which began in 1954, the United States had
the country. The United States had been at a
1800 U.S. Marine Corps (which was the only unit of
the United States Government) and, since 1954, were

not liable to capture and condemnation in prize. 311

In the landmark decision of The Paquette Habana, the United States Supreme Court reiterated the established rule of customary law that small coastal fishing vessels could engage in local fishing activities without being subject to capture and without destroying the effectiveness of the blockade. In reaching his decision, Mr. Justice Gray reasoned that the prevailing humanitarian views of mutual accommodation and the tenderness traditionally shown to a "poor and industrious order of people", required the United States to forego the capture and condemnation in prize of these small coastal fishing vessels. However, Justice Gray went on to qualify this exemption by setting forth the following limitations:

The exemption, of course, does not apply to [coastal] fishermen or their vessels, if employed for a warlike purpose, or in such a way as to give aid or information to the enemy; nor when military or naval operations create a necessity to which all private interests must give way. 312

During the Korean conflict, the United States blockading forces made no exception for the usually exempt fishing craft and all such vessels which had been located were seized and summarily destroyed. The announced

not liable to capture and communication in person. All
 in the language of the Proctor Journal, the
 United States Supreme Court reviewed the established
 rule of comity law that each state shall retain
 could emerge in local fishing activities without being
 subject to capture and without disturbing the relations
 rest of the world. In reaching his decision, Mr.
 Justice Gray reasoned that the prevailing commercial
 view of international communication and the common law
 ally show to a great and important order of things.
 pointed the United States to follow the course and
 communication in place of those which would bring
 would. However, Justice Gray went on to modify this
 exemption by setting forth the following limitations:

The exemption of power, does not apply to
 [certain] fisheries or other vessels. It
 employed for a marine purpose, as it was
 a way as to give all information to the
 enemy, nor was it used as a means of
 means a necessity to which all private
 interests must give way. 312

During the Korean conflict, the United States
 blockade forces made no exception for the vessels
 except fishing craft and all such vessels were and have
 located were seized and eventually destroyed. The exemption

purpose of these U.S. actions was to cut off the main source of food supply for North Korean and Chinese Communist troops since fish was a staple in their diet. In addition, incidents of North Korean "deep sea" fishing vessels serving as military communications and weather craft had frequently occurred throughout the course of the war.

However, during this country's most recent mining interdiction campaign in North Vietnam in 1972, the United States saw fit to again afford coastal fishing vessels their traditional immunity through the exclusive employment of magnetic type mines, the utilization of which was designed to permit wooden-hulled vessels, such as fishing boats, to exercise their right of unhindered passage. It should be noted that during a Defense Department briefing which released information that U.S. mines could only be triggered by the passage of " a sizeable metallic object, " U.S. spokesmen also inferred that acoustic and pressure type mines were readily available and would be employed in the future if North Vietnam should nullify the immunity accorded its wooden fishing vessels by trying to temporarily convert them into minesweepers or use them in any other unauthorized manner. 314

purpose of these U.S. actions was to cut off the main
source of food supply for North Vietnam and Chinese
Communist troops since fish was a staple in their diet.
In addition, incidents of North Korean "deep sea" fishing
vessels arriving at military communications and weather
craft had frequently occurred throughout the course of
the war.

However, during this country's most recent military
interdiction campaign in North Vietnam in 1972 the
United States was left to waste effort coastal fishing
vessels their traditional immunity through the exclusive
employment of magnetic type mines. The utilization of
which was designed to permit wooden-hulled vessels, such
as fishing boats, to continue their trade of maritime
passage. It should be noted that during a Vietnam
Department believed which released information that U.S.
mines could only be rendered in the presence of a non-
able metallic object, "U.S. fishermen also informed that
acoustic and pressure type mines were readily available
and would be employed in the future if North Vietnam should
nullify the immunity accorded its wooden fishing vessels
by trying to temporarily convert their into "metallic"
or use them in any other unauthorized manner. III

3. The Attempt to Minimize Loss
of Life and Human Suffering

While the critics of the current United States mining interdiction campaign have pointed out that the U.S. attempts to throttle the delivery of war materials contained in the seaborne cargoes destined for the ports of North Vietnam would also deny "food, petroleum and the necessities of life" to that country's civilian population, ³¹⁵ and may not be so different from the indiscriminate attacks against non-belligerent shipping which were carried out by World War I German U-boat Commanders in 1917, ³¹⁶ these same critics despite their self-professed interest in U.S. naval interdiction policies, have failed to suggest any other reasonably effective and available alternative to the U.S. naval interdiction measures which are now being enforced off the coast of North Vietnam. For when one discusses those value conserving considerations shown during the planning and implementation stages of the present U.S. mining policy, or the lack thereof, one should also bear in mind the nature of the "other" available military instrumentalities of war which might be employed as as alternative coercive measures the use of which,

2. The Agreement to Restrict Trade
of Arms and Ammunition

With the object of the current United States
armed information committee now active in the
U.S. attempt to restrict the delivery of arms and
ammunition to the various countries in the
of North Vietnam would also have been
the possibility of 1970 in that country's
population, 11% and not as in 1970, 12%
industrialized states and the
which were carried out by the U.S. in 1970
December, 1970. In 1970, the U.S. had
self-proclaimed interest in 1970, 12%
policy, have failed to prevent the
effective and serious situation in the U.S.
information resources which are now being
the coast of North Vietnam. For the
those who consider themselves as
planning and information of the
military policy, on the one hand, and
in the history of the United States
instrumentation to be used in the
an alternative source of arms and

however, might tend to cause extremely high losses of life and produce excessive amounts of human pain and suffering.

For instance, if U.S. decision makers had not decided to utilize a mine warfare interdiction campaign, then an alternative mode of coercion such as extremely heavy bombing raids, might have been exclusively employed to destroy Haiphong's docks and other port facilities. It would seem to follow, therefore, that the less reliance the United States placed upon traditional as well as innovative maritime restrictive measures, the greater reliance the United States would have had to place on massive bombing raids.

While the results of the U.S. air war against North Vietnam were already staggering in terms of the costs in human lives and in losses of property, any additional U.S. commitment in order to produce the equivalent effects of a successful mining interdiction, would have required the United States to drastically increase its use of the following offensive air interdiction measures:

Industrial Bombing

The U.S. air war campaign which is presently termed "Operation Linebacker" ³¹⁷ has, during the past year,

however, might tend to cause extremely high losses of life and produce excessive amounts of human pain and suffering.

For instance, if U.S. destruction efforts had not resulted to utilize a more varied intelligence collection, then an alternative mode of coercion such as extremely heavy bombing raids, which have been exclusively employed by destroyers, might have been more easily facilitated. It would seem to follow, therefore, that the less reliance the United States placed upon traditional as well as innovative maritime restrictive measures, the greater reliance the United States would have had to place on massive bombing raids.

While the results of the U.S. air war against North Vietnam were already staggering in terms of the costs in human lives and in losses of property, any additional U.S. commitment in order to produce the complete annihilation of a successful enemy, would have required the United States to drastically increase its use of the following offensive air interdiction measures:

Industrial Bombing

The U.S. air war campaign which is presently being "Operation Linebacker" 317 has, during the same year,

increasingly concentrated on the systematic destruction of all industrial and manufacturing plants, electric power and transformer sites, petroleum storage facilities and numerous other civilian installations vital to the North Vietnamese war effort and economy. ³¹⁸ In addition to the destruction of the industrial targets previously mentioned, U.S. offensive air activities have also included the targeting and destruction of numerous major highway and canal bridges as well as other rail and surface communication links. ³¹⁹ Because of the small amount of steel and building materials which are produced within North Vietnam itself, the immediate repair and replacement of such bombed out facilities would have been extremely limited. However, on June 25, 1972, United States jets were reported to have dropped laser-guided 2000 pound "smart bombs" into the Thai Nguyen Steel Plant's open hearth furnace thereby destroying North Vietnam's entire steel-producing capacity. The complex, two square miles in area, is the biggest industrial plant in North Vietnam and the only domestic source of structural steel available for railroads, bridges and buildings. ³²⁰

Industrially concentrated on the petroleum business

of all industrial and commercial plants, almost none

and transportation lines, machine tools facilities and

numerous other civilian installations prior to the 1940

Vietnamese war effort and economy. It is evident in the

development of the industrial machine tools industry, however,

0-8, following its withdrawal from the United States

after the withdrawal of American troops from Vietnam and Laos

which are now in the hands of the Vietnamese government.

Since 1945, however, the growth of the machine tools industry

building materials and the machine tools industry

has been the primary reason for the development of the machine

tools industry which has been extremely limited. However,

on June 15, 1977, the machine tools industry in the

United States has been the primary reason for the

growth of the machine tools industry in the United States

and the machine tools industry in the United States

destroyed by the Vietnamese war effort and economy.

The machine tools industry in the United States

Industrially concentrated on the petroleum business

of all industrial and commercial plants, almost none

and transportation lines, machine tools facilities and

numerous other civilian installations prior to the 1940

Vietnamese war effort and economy. It is evident in the

development of the industrial machine tools industry, however,

0-8, following its withdrawal from the United States

after the withdrawal of American troops from Vietnam and Laos

Dikes

Shortly after the U.S. mining interdiction campaign was announced, the North Vietnamese Government began to lodge protests against those American air strikes which were said to have damaged or endangered North Vietnam's important network of flood-control dikes. After vehemently denying that the United States had ever "targeted" North Vietnamese dikes as such, a crescendo of criticism engulfed U.S. policy makers during the third and fourth weeks of July, 1972 concerning U.S. air attacks which were said to have damaged these flood control structures. While traveling in Moscow, United Nations Secretary-General, Kurt Waldheim said, on July 22nd, that he was concerned about U.S. bombings of North Vietnam's dikes and that thousands would die if such bombings were carried out. 321 Secretary-General Waldheim's appeal to the United States expressing hope that "this [result] will be avoided," produced a high degree of confusion, consternation and belated clarification concerning just what the United States air policy was with regard to the bombing of North Vietnam's dike network. As an outcome of these heated accusations and rebuttals, the U.S. Department of State

Notes

Shortly after the U.S. military intervention campaign was announced, the North Vietnamese Government began to lodge protests against these American air strikes which were said to have damaged or endangered North Vietnam's important network of flood-control dikes. After vehemently denying that the United States had ever "targeted" North Vietnamese dikes as such, a spokesman of Lyndon B. Johnson's U.S. policy makers during the third and fourth weeks of July, 1972 concerning U.S. air strikes which were said to have damaged these flood control structures. While traveling in Moscow, United Nations Secretary-General Kurt Waldheim said, on July 23rd, that he was disappointed about U.S. bombing of North Vietnam's dikes and that thousands would die if such bombing were carried out, (22) Secretary-General Waldheim's appeal to the United States expressing hope that "this [bombing] will be avoided," produced a high degree of confusion, consternation and related clarification concerning just what the United States air policy was with regard to the bombing of North Vietnam's dike network. As an outcome of these heated accusations and rebuttals, the U.S. Department of State

released a Government intelligence report on July 28, 1972 which indicated that American bombing had damaged North Vietnam's dike system at twelve points but that the bombing was said to be unintentional and that the damage which had been inflicted was said to be only slight. 322

Civilian Casualties

Following the renewed commencement of full scale bombing which was resumed on April 6, 1972, charges from Hanoi that "great numbers" of civilians were killed or wounded in U.S. bombing raids on shipyards, warehouses and army depots were followed by official U.S. acknowledgments that "If civilians were working in army depots and in the areas that were hit, there probably were casualties because the bombs went in right on target." 323

The apparent results of similar bombing attacks provoked Sweden's Ambassador to Hanoi to accuse the United States of pursuing "a policy of annihilation" in its bombing of North Vietnam. 324 In an interview published in the Stockholm newspaper Aftonbladet, Ambassador Jean-Christophe Oeberg said that "American bombing was designed to weaken North Vietnam's economy for a long time to come and make it a second or third rank nation

received a Government Intelligence report on July 15, 1953
which indicated that certain persons had received copies
of the report. It was stated that the report was being
distributed to the persons who had received it. The report
was said to be confidential and that the persons who
had been indicated were said to be in the area.

CIVILIAN COPIES

Following the receipt of the report of this matter,
copies were made and sent to the following persons:
Barclay, Earl, "Chief Counsel" of the American Bar Association
and other persons were followed by a letter from the
American Bar Association dated July 15, 1953, which was
in the name of the American Bar Association and was
signed by the American Bar Association.

The report was of the American Bar Association
dated July 15, 1953, and was sent to the following
persons: Earl, Barclay, "Chief Counsel" of the American Bar
Association and other persons were followed by a letter from
the American Bar Association dated July 15, 1953, which was
in the name of the American Bar Association and was signed
by the American Bar Association.

in Southeast Asia. The Ambassador also alleged that the United States was not only bombing military targets but it was also "dropping antipersonnel bombs on housing areas, schools and hospitals. . . ." 325

Anti Personnel Bombs

Reports giving the North Vietnamese versions of U.S. air attacks which were published in The New York Times assert that American planes, on June 28, 1972, destroyed two dispensaries in the Port of Haiphong while "dart bombs" were released by U.S. aircraft which "killed and wounded many people in the city." 326

Dart Bombs

In an article published in The Washington Post on July 13, 1972 announcing that American warplanes had been dropping a whole range of bombs including a special variety which dispensed tear and nausea gases, U.S. intelligence sources at the same briefing, provided the following background information concerning the following types of "specialty bombs:"

in Southeast Asia. The handbook also states that the
United States was not only bombing military targets but
it was also dropping antipersonnel bombs on housing areas,
schools and hospitals. . . . 322

Anti Personnel Bombs

Reports giving the North Vietnamese version of U.S.
air attacks which were published in the New York Times
assert that American planes, on June 16, 1972, destroyed
two dispensaries in the town of Hai Phong while "lost bombs"
were released by U.S. aircraft which killed and wounded
many people in the city. 324

Leaf Bombs

In an article published in the Washington Post on
July 12, 1972 announcing that American warplanes had
been dropping a whole range of bombs including a "new"
variety which disintegrated trees and caused severe
infirmitas to the same plants, provided the
following background information concerning the following
types of "specialty bombs":

- (1) The CBU-24 and CBU-33 bombs packed with dozens of small bomblets designed to blow the tires off trucks and the treads off tanks which pass over them;
- (2) The gravel anti-personnel cluster bomb unit which according to a military manual has the appearance of gravel but "can blow a man's foot off but will not blow a hole in a truck tire"; and
- (3) The Mk-36 incendiary cluster bomb, an 800 pound weapon packed with 182 fire bomblets of World War II design. 327

It does not take a significant amount of imagination to envision the awesome effects which these antipersonnel weapons might produce if inadvertently released over North Vietnamese population centers. And, even if repeated U.S. assurances that North Vietnamese population centers are not being "targeted" or subjected to direct air attacks utilizing these and other similarly destructive weapons are taken at face value, a strong possibility would seem to exist that out of the 400 to 500 air strikes conducted weekly, some inadvertent or premature releases of explosive weapons including U.S. "specialty bomb" cannisters could conceivably occur, particularly if the U.S. aircraft involved was attempting to avoid anti-aircraft fire, surface to air missiles, North Vietnamese interceptors or to engage in other highly evasive maneuvers.

Therefore, after analyzing the potential horrors

(1) The CM-32 and CM-33 bombs packed with weapons of small caliber designed to blow the floor off a room and the inside off tanks which have over them.

(2) The heavy anti-personnel cluster bomb which is designed to be a military manual bomb the appearance of which but "can blow a tank's foot off but will not blow a hole in a tank's tire" and

(3) The M-55 incendiary cluster bomb, an 800 pound weapon packed with 121 five pounds of incendiary II design.

It does not take a sophisticated amount of investigation to realize the serious effects which these anti-personnel weapons might produce if inadvertently released over North Vietnamese population centers. This was the reason U.S. announced that North Vietnamese population centers are not being "targeted" or subjected to direct air strikes utilizing these and other similarly destructive weapons are taken as face value, a strong possibility would have to exist that out of the 500 to 800 air strikes conducted weekly, some inadvertent or otherwise release of weapons including U.S. "friendly" bombs would occur, particularly in the U.S. aircraft. Involvement in such anti-personnel strikes would be the result, North Vietnamese authorities or to cause in other highly sensitive regions. Therefore, after realizing the potential dangers

which can be produced by the inadvertent bombing of population centers, the alternative value conserving considerations associated with maritime mining interdiction become graphically clear. As Lieutenant Commander Arnold S. Lott, the author of "Japan's Nightmare - - Mine Blockade" has written:

A mine blockade enables the winner to win without killing. Enemy ships lost in a mine field enter it by their own choice; the enemy is free to keep his ships in port and save them if he wishes. But more important, mines never destroy homes, hospitals or industrial facilities necessary to peacetime rehabilitation, nor do they wipe out non-combatant civilians [and their population centers]. 328

To confirm the presence and the location of the lesion, the following steps should be followed:

was also on display, the Atlantic Wine controversy

U. Iatc, the author of "Japan's Resistance - Was it Worth it?"

1992

control, the
one-way street citizens lead their population
towards rehabilitation, not to turn them out
responsible or industrial facilities necessary to
the more important, since they destroy food
the wine is more and more and it is useless.
it by their own choice, the wine is left to them
filling. Many wine have to wine taste under
A wine drinker makes the wine to all without

VI. RECOMMENDATIONS

While it would appear that at the time the President made his May 8th mining interdiction announcement and during the subsequent amplifying news conferences held by high Administration officials, the need for the United States to conduct offensive mining measures was amply demonstrated - - it is recommended that future broader-based and more fully coordinated follow-up efforts be undertaken by utilizing news media and public information channels to more actively portray the effects of the U.S. mining interdiction in terms of minimizing the destruction of human values and as a positive protection against the unnecessary destruction of human life. It is conceded, however, that such an announced presentation of the positive virtues of the current mining interdiction policy might unnecessarily alter the apparently successful "low profile" posture of the current mining interdiction by either re-introducing it as a controversial public issue or causing it to be contrasted with other unpopular military measures (such as the heavy bombing of North Vietnam's industrial centers or the alleged bombing attacks along North Vietnam's system of dikes) thereby causing such a public information policy to be considered by U.S.

While it would appear that at the time the

last was his was the mind is restricted

and during the subsequent activities now concerned with

by high administrative officials, the need for the

states to conduct official duties, however, are

demonstrated - - it is recommended that future

based on more fully documented data as

unaffected by military and other

channels to more actively pursue the

U.S. State Department in terms of

destruction of human values and as a

against the unnecessary destruction of

It is concluded, however, that such an

action of the people of the

interaction policy which

generally successful in

current state of affairs in

as a consequence of

continued with other

measures taken in the

Industrial centers in the

North Vietnam's

a public information policy to be

decision makers as being counter productive. However, because of the sensitivity of such a course of action, it is recommended, that, to the greatest extent possible, the major portion of any announcement concerning the humane and value conserving considerations relating to the commencement of a naval mining interdiction be made contemporaneously with the inauguration of such maritime restrictive measures or made as soon thereafter as is practicable.

Likewise, in order to demonstrate the concern of the United States for such humanitarian considerations as would safely permit the carefully monitored introduction of medical supplies through mined North Vietnamese ports and harbors, it is recommended that special provisions be made by United States decision makers to permit the passage of needed medical stores through the mined "interdiction zone" on a prudent and selective basis. One major difficulty in such a course of action lies, of course, in the inability of the United States to insure that such medical supplies will not ultimately be forwarded to the armed forces of our foes. However, to the greatest extent possible, the inauguration of such humanitarian measures should be actively explored and and the decision to engage in such a value conserving undertaking should, if warranted, be made the subject of a public disclosure.

decision makers as being counter productive. However, because of the sensitivity of such a course of action, it is recommended, that, to the greatest extent possible, the major portion of any announcement concerning the human and value conserving considerations relating to the conduct of a naval mining interdiction be made contemporaneously with the inauguration of such wartime restrictive measures or made as soon thereafter as is practicable.

Likewise, in order to demonstrate the concern of the United States for such humanitarian considerations as would safely permit the carefully monitored introduction of medical supplies through mined North Vietnamese ports and harbors, it is recommended that special provisions be made by United States decision makers to permit the passage of needed medical stores through the mined "interdiction zone" on a prudent and selective basis. One major difficulty in such a course of action lies, of course, in the inability of the United States to insure that such medical supplies will not ultimately be forwarded to the armed forces of our foes. However, to the greatest extent possible, the inauguration of such humanitarian measures should be actively explored and the decision to engage in such a value conserving undertaking should, if warranted, be made the subject of a public disclosure.

guarding of classified mine warfare technology, consideration be given to the public release of information concerning proposed or contemplated methods of mine deactivation and removal after the current U.S. mining interdiction has served its intended purpose. Such a public disclosure given to international shipping interests would tend to make the choice of U.S. decision makers to employ current mining interdiction measures even more palatable to third party nations and would also serve to dramatize the fact that the United States has the capability of safely removing the offensive mines which it has sown once a satisfactory solution to bring the present hostilities to an end has been achieved.

Finally, recognizing the extreme political and military sensitivities in arriving at the initial decision to mine a belligerent's inland or territorial waters, once the risks associated with the commencement of such measures during future hostilities have been deemed to be acceptable, it is highly recommended that the militarily effective and value conserving instrumentality of a maritime interdiction be implemented as soon as possible after the advent of hostilities in order to maximize the flexibility and the impact which this viable and highly selective naval sanctioning device possesses for humanely restoring and maintaining world public order.

question of classified information technology, however,
should be given to the public release of information
concerning proposed or contemplated methods of such
classification and removal after the current U.S. policy
interaction has served its intended purpose. But,
public disclosure given to international shipping
interests would have to take the policy of U.S. security
interests to which current marine transportation measures
even more applicable to third party nations and would
also serve to demonstrate the fact that the United States
has the capability of such a removal and information system
which is not now a satisfactory solution to this
the present possibility for an end to the matter.
Finally, recommending the removal of national and military
sensitization is advised in the initial decision to take
a ballistic missile's launch or launchable system, and the class
associated with the development of such sensitive data
future possibilities have been found to be substantial. It is
highly recommended that the military attention and while
concerning international relations of a similar information be
implemented in such as possible after the advent of possible
ties in order to maintain the possibility and the future
which this viable and highly effective naval communication
device possesses for human's protection and maintenance
world public order.

FOOTNOTES

1

For text of President Nixon's address of May 8, 1972 made to the Nation on television and radio, see Dept. State Bull., May 29, 1972, vol. LXVI, no. 1718 at 747; Washington Post, May 9, 1972, at A 15, col.5; N.Y. Times, May 9, 1972, at 18, col. 1.

2

See Reston, "Moscow's Waiting Game," N.Y. Times, May 12, 1972, at 39, col. 1; Sorensen, "It Isn't the Cuban Missile Crisis," at 39, col. 3, same edition and Chayes, "Mr. Nixon Avoids Use of 'Blockade,'" Washington Post, May 14, 1972, at B 6, col. 1.

3

Sorensen, "It Isn't the Cuban Missile Crisis," N.Y. Times, May 12, 1972, at 39, col. 3. [hereinafter cited as Sorensen].

4

Chayes, "Nixon Avoids Use of 'Blockade,'" Washington Post, May 14, 1972, at B 6, col. 1. [hereinafter cited as Chayes]

5

Id.

6

See text of the President's speech, supra note 1 wherein President Nixon stated that "countries with ships presently in North Vietnamese ports have already been notified that their ships have three daylight periods to leave in safety. After that time, the mines will become active and any ships attempting to leave or enter these ports will do so at their own risk."

7

Moore, "A Professor on the Law of Blockade," Washington Post, May 21, 1972.

8

M. McDougal and F. Feliciano, Law and Minimum World Public Order 50 (1961) [hereinafter cited as McDougal and Feliciano].

9
Id. at 51.

10
Captain Powers later attained the rank of Rear Admiral in 1961 while serving as the Deputy and Assistant Judge Advocate General of the Navy

11
Powers, "Blockade: For Winning Without Killing," 84 Nav. Inst. Proc. 61 (1958).

12
Id.

13
Id.

14
Id.

15
L. Oppenheim - M. Lauterpacht, 2 International Law 768 (7th ed. 1952). [hereinafter cited as Oppenheim- Lauterpacht].

16
Id.

17
Id. at 769.

18
Id.

19
Id. at 796.

20
C. Colombos, International Law of the Sea 587 (3d ed. 1954) [hereinafter cited as Colombos].

21
Id.

22
Oppenheim - Lauterpacht, supra note 15, at 779.

10. 21. 1941

11. 22. 1941
The following is a list of the names of the persons who were present at the meeting held on the 21st and 22nd of the month.

12. 23. 1941
The following is a list of the names of the persons who were present at the meeting held on the 23rd of the month.

13. 24. 1941

14. 25. 1941

15. 26. 1941

16. 27. 1941

17. 28. 1941
The following is a list of the names of the persons who were present at the meeting held on the 28th of the month.

18. 29. 1941

19. 30. 1941

20. 31. 1941

21. 1. 1942

22. 2. 1942
The following is a list of the names of the persons who were present at the meeting held on the 2nd of the month.

23. 3. 1942

24. 4. 1942

23

Id.

24

Id.

25

Id.

26

See Colombos, supra note 20, at 594.

27

McDougal and Feliciano, supra note 8, at 493.

28

Id.

29

Id. at 492.

30

McDougal and Feliciano, supra note 8, at 480.

31

Id. at 481.

32

Id.

33

Id. at 482.

34

Id.

35

McDougal and Feliciano, supra note 8, at 516.

36

Id.

37

Id. at 517.

38

Id.

12
10
11
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

and the other two, which are

the same as the other two, which are

the same as the other two, which are

the same as the other two, which are

39

Hogan, Pacific Blockade (1908); 2 Hyde International Law 1607 (2nd ed. 1945); 2 Oppenheim - Lauterpacht, International Law 144 (7th ed. 1945).

40

U.S. Naval War College, International Law Situations 94 (1932).

41

2 Hyde, International Law 1667-68 (2nd ed. 1945).

42

International Law Situations 1932, supra note 40, at 94.

43

G. von Glahn, Law Among Nations 505 (1965).
[hereinafter cited as von Glahn].

44

Id.

45

Id.

46

McDougal and Feliciano, supra note 8, at 477.

47

von Glahn, supra note 43, at 504.

48

Id.

49

Id. at 505.

50

Id.

51

Id.

52

47 Dept. State Bull. 715.

53

Id.

54

Id.

55

The proclamation included surface to surface missiles, bomber aircraft, and assorted armament and supporting equipment.

56

Presidential Proclamation No. 3504, 27 Fed. Reg. 10401 (1963), 47 Dept. State. Bull. 717 (1962).

57

Id.

58

"Actions of the Military Services in the Cuban Crisis Outlined," U.S. Dep't of Defense News Release No. 1942-62, Nov. 29, 1962, pp. 1-7.

59

Id.

60

Id.

61

Id.

62

Id.

63

The October 22, 1962 statement of Secretary of Defense Robert S. McNamara contained in 9 U.N. Review 6-17, 77-84 (Nov. 1962).

64

Excerpts from Notice to Mariners, No. 47; Dep't. of the Navy Oceanographic Office, Wash., D.C. 2547-8.

65

N.Y. Times, Oct. 25, 1962; See also Special Warning No. 32 (6208), note 66 above.

25

26

27

28

29

The information included herein is subject to revision, change, deletion, and correction without notice.

30

10401 (1961) 47 Sept. 1961, 717 (1961).

31

32

33

1941-42, Nov. 22, 1941, pp. 1-7.

34

35

36

37

38

39

40

41

42

The October 12, 1941 statement of Secretary of Defense Robert E. Heeney contained in "The Nation" 8-17, 77-84 (Nov. 1941).

43

1941-42, Nov. 22, 1941, pp. 1-7.

44

1941-42, Nov. 22, 1941, pp. 1-7.

66

N.Y. Times, October 26, 1962; Para. No. 5982,
Notice to Mariners No. 45, 1962.

67

United States Navy, Law of Naval Warfare, NWIP
10-2 (1955).

68

Id. (Sec. 502 b.3).

69

Id. (Sec. 502 b.6-7).

70

47 Dept. State Bull. 740

71

Id.

72

Dept. of Defense News Release No. 1835-62, Nov. 12,
1962.

73

Id.

74

N.Y. Times, Nov. 21, 1962, at 10, col. 1; Pres.
Proc. No. 3507, 27 Fed. Reg. 11525 (1962).

75

Coletta, "Naval Mine Warfare," 85 Nav. Inst. Proc.
82 (1959). [Hereinafter cited as Coletta].

76

Lott, "Japan's Nightmare - Mine Blockade," 85 Nav.
Inst. Proc. 39 (1959). [hereinafter cited as Lott]

77

Coletta, supra note 75, at 82.

78

Cagle and Manson, "Wonsan: The Battle of the Mines,"
83 Nav. Inst. Proc. 598 (1957). [hereinafter cited as Cagle
and Manson].

79
Coletta, supra note 75, at 82.

80
Cagle and Manson, supra note 78, at 599.

81
Id.

82
"How Underwater Mines Work," TIME, May 22, 1972,
at 14, col. 1.

83
Coletta, supra note 75, at 84.

84
Cagle and Manson, supra note 78, at 599.

85
Cagle and Manson, supra note 78, at 600.

86
Id.

87
Coletta, supra note 75, at 84.

88
Cagle and Manson, supra note 78 at 600.

89
LCDR Arnold S. Lott, USN served on Commander
Seventh Fleets Staff during World War II and later as
special writing assistant for the Chief of Naval Informat-
ion. He is the author of the book Most Dangerous Sea
which is a portrayal of the history of mine warfare in
World War II.

90
Lott, supra note 76, at 85.

91
Id. at 49.

92
Id. at 39.

1. 100, 101, 102

doi:10.1017/S0022292412001619

Collected, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651

World War II
which is a portrayal of the history of the United States
from the end of the Civil War to the present.
Special writing assistance for the title of World History
Several times World History was II and later on
this article I read. Was revised on December

100

- 93
Id. at 40.
- 94
Id. at 41.
- 95
Id. at 45.
- 96
Id. at 41
- 97
Id. at 46.
- 98
Id. at 49
- 99
Id.
- 100
Id.
- 101
Id. at 50.
- 102
Id.
- 103
Id.
- 104
Id.
- 105
Id.
- 106
Id. at 47.
- 107
McDougal and Feliciano, supra note 8. at 492.
- 108
Cagle and Manson, supra note 78, at 599.

109

Id. at 602-3.

110

The Second Hague Peace Conference (VIII) Relative to the Laying of Automatic Submarine Contact Mines (36 Stat 2332; Treaty Series 541, signed 18 October 1907.

111

Hague Convention VIII (1907), Article 1(1).

112

Id. at 601.

113

Cagle and Manson, supra note 78, at 609.

114

The widespread use by U.S. forces of floating mines which had not, pursuant to Article 1 (1) of the 1907 Hague Convention rendered themselves harmless after "one hour at most after they have escaped from the control of the person who laid them", appears to have been largely ignored during World War II in case of aerial mining conducted against Japanese controlled rivers. (See notes 20 and 21 supra). Such a "customary" practice of nations not engaging in "floating mine warfare" in a zone occupied exclusively by belligerents is not therefore clearly supported by the established practice among nations.

115

Id.

116

Id. at 610.

117

Id. at 608.

118

Id. at 610.

119

See W. Mallison, Studies in the Law of Naval Warfare, 53 International Law Studies 1966, U.S. Naval War College 126 (1968) [hereinafter cited as "Studies in the Law of Naval Warfare"] where the author notes that

the traditional immunity afforded coastal fishing boats in time of war was not allowed North Korean coastal and and deep sea fishing boats because sea food was thought to be such a vital staple in the Communist diet that its denial would have had a strategic effect on North Korean imports. Likewise, the utilization of North Korean fishing vessels for mine warfare activities completely intergrated these craft into the North Korean military force structure so as to destroy any exemption under the U.S. Supreme Court holding of The Paquete Habana , 175 U.S. 677 (1900) and the provisions of Article 3 of the Hague Convention XI (1907).

120

Cagle and Manson, supra note 78, at 610.

121

Id. at 611.

122

Text of Presidential News Conference, supra note 1, at 747.

123

Id.

124

Id. at 748.

125

Id.

126

Id.

127

Id. at 749.

128

Id.

129

Id.

130

For the text of Ambassador Bush's letter of May 8, 1972, see Dept. State Bull., May 29, 1972, vol. LXVI, No. 1718, at 750; Washington Post, May 9, 1972, at A 15, col. 1.

the traditional hunting grounds of the
 in this of was not allowed with horses and
 and land for hunting and horses and land was
 to be such a great extent in the country that the
 should not have had a separate without the horses
 horses. The situation of the horses was
 horses for the horses and horses and horses
 horses into the horses and horses and horses
 so as to be better and horses and horses
 horses of the horses and horses and horses
 horses of the horses and horses and horses

230
 231
 232
 233
 234
 235
 236
 237
 238
 239
 240
 241
 242
 243
 244
 245
 246
 247
 248
 249
 250
 251
 252
 253
 254
 255
 256
 257
 258
 259
 260
 261
 262
 263
 264
 265
 266
 267
 268
 269
 270
 271
 272
 273
 274
 275
 276
 277
 278
 279
 280
 281
 282
 283
 284
 285
 286
 287
 288
 289
 290
 291
 292
 293
 294
 295
 296
 297
 298
 299
 300

230
 231
 232
 233
 234
 235
 236
 237
 238
 239
 240
 241
 242
 243
 244
 245
 246
 247
 248
 249
 250
 251
 252
 253
 254
 255
 256
 257
 258
 259
 260
 261
 262
 263
 264
 265
 266
 267
 268
 269
 270
 271
 272
 273
 274
 275
 276
 277
 278
 279
 280
 281
 282
 283
 284
 285
 286
 287
 288
 289
 290
 291
 292
 293
 294
 295
 296
 297
 298
 299
 300

131

See Smith, "Legal Basis Cited for Nixon Action,"
N.Y. Times, May 9, 1972, at 18, col. 4.

132

Article 51 of the United Nations Charter provides in pertinent part that "Nothing in the present charter shall impair the inherent right of individual or collective self defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right shall be immediately reported to the Security Council"

133

For the Text of Dr. Henry Kissingers news conference of May 9, 1972, See Dept. State Bull., May 29, 1972, vol. LXVI, No. 1718, at 752.

134

Id. at 753.

135

Id. at 754

136

Id.

137

Id. at 755.

138

Appearance on the "Today" Show, NBC-TV, May 9, 1972, at 8:15 A.M.

139

For text of Secretary of Defense Melvin Laird's news conference of May 10, 1972, See Dept. State Bull., May 29, 1972, Vol LXVI, No. 1718, at 761.

140

Id. at 764.

141

Id. at 770.

142

Id. at 768

143

Welles, "U.S. Intelligence Was Surprised by Enemy's Drive," N.Y. Times, May 11, 1972, at 1, col. 7.

144

Id. at 19

145

Id. at 19.

146

Whitney, "Thieu Orders Martial Law," N.Y. Times, May 11, 1972, at 1, col. 6.

147

Text of Presidential News Conference, supra note 1, at 749.

148

Note 146 supra.

149

Text of Presidential News Conference, supra note 1, at 750.

150

N.Y. Times, May 14, 1972, at 28, col. 4.

151

Frankel, "Nixon's Gamble: Counting on Moscow to Avoid the Erink," N.Y. Times, May 14, 1972 (The Week in Review) Sec. 4, at 1, col. 1.

152

Smith, "Soviet Mining Fosters Cooperation with China to Aid Hanoi," N.Y. Times, May 18, 1972, at 10, col. 1.

153

Id.

154

Washington Post, May 24, 1972, at 1, col. 6.

SAT

027 34 382

工部工

Walter, "U.S. Intelligence Was Compromised by
"Money's Drive", N.Y. Times, May 11, 1975, at 1, col. 1.

528

21 34 51

22

2010.04.16

545

May 11, 1972, at 1:01 p.m.

521

Test of Presidential Power Conference, June 1955.

GAI

942

Page 1 of 100

021

N.Y. Times, May 24, 1972, p. 10, col. 4.

(Soviet) Fed. & St. L. Col. 1.
 Avoid the water, W.V. Vines, May 14, 1971; from same
 Forest, Wilson's Creek, Coalinga on road to

424

1. The first of these is the fact that the
2. "Soviet Mining Institute" (Soviet Mining
3. Institute) was founded in 1925, and in 1927,
4. it was reorganized as the "Soviet Mining
5. Institute" (Soviet Mining Institute).

CPS

51

4. 2. 2

155

Id.

156

Id.

157

Washington Post, June 19, 1972, at A8, col. 1.

158

Id.

159

On May 15, 1972, Secretary of State William P. Rogers expressed confidence when he appeared before the Senate Appropriations Subcommittee that "none of the dire predictions about the catastrophic consequences of the President's decision has come to pass. He said the mining of North Vietnam's harbors might likely be the turning point in the war."

160

Karnow, "President's Move Long Urged By Military, Fought By Others," Washington Post, May 9, 1972, at A15, col. 3.

161

162

Id.

163

Id.

164

Id.

165

Note 160 supra.

166

Id.

167

Id.

137
138

139
140

141
Washington Post, June 10, 1971, at 28, col. 1.

142
143

144
On May 12, 1970, Secretary of State William P. Rogers expressed confidence that he expected before the Senate Appropriations Subcommittee that "some of the best evidence about the economic consequences of the President's decision has come to hand. He said the study of North Vietnam's economy might likely be the turning point in the war."

145
FARROW, "President's War Low Level in Military,"
Fought by Garry, Washington Post, May 7, 1971, at 11.

146
147

148
149

150
151

152
153

154
155
156

157
158

159
160

168

Id.

169

Id.

170

Id.

171

Id.

172

Evening Star, May 9, 1972, at 1, col. 7.

173

Id.

174

Evening Star, May 9, 1972, at 1, col. 6.

175

N.Y. Times, May 11, 1972, at 19, col. 8.

176

Id.

177

Washington Post, May 26, 1972, at 1, col. 8.

178

Id.

179

Washington Post, May 30, 1972, at 1, col. 5.

180

Id.

181

Washington Post, June 10, 1972, at 1, col. 1.

182

Note 179 supra.

144
145

146
147

148
149

150
151

152
153

154
155

156
157

158
159

160
161

162
163

164
165

166
167

168
169

170
171

172
173

174
175

183

Id.

184

Washington Post, May 16, 1972, at A14, col. 8.
N.Y. Times, May 24, 1972, at 1, col. 1.

185

Id.

186

The Washington Evening Star reported that the other ports on the U.S. target list included, Hon gai, Cam pha, Quang Khe, Dong Hoi, Vinh and Than Hoa. The Evening Star, May 9, 1972, at A6, col. 5. (See Appendix A).

187

Id. at 1, col. 4.

188

Note 139 supra at 765.

189

Note 186 supra.

190

Id.

191

N.Y. Times, May 9, 1972, at 1, col. 7.

192

Washington Post, May 9, 1972, at 1, col. 4.

193

Note 191 supra.

194

N.Y. Times, May 14, 1972, at 1, col. 7.

195

The Evening Star, May 15, 1972, at 1, col. 8.

196

Id.

183

Id.

184

Washington Post, May 16, 1973, at A14, col. 3.
N.Y. Times, May 26, 1973, at I, col. 1.

185

Id.

186

The Washington Evening Star reported that the
other facts on the U.S. tanker ship involved, the ship
Camden, owned by, Good Oil, and that the ship
Evening Star, May 2, 1973, at A1, col. 3. (See Appendix A).

187

Id. at I, col. 4.

188

Note 186 supra at 765.

189

Note 186 supra.

190

Id.

191

N.Y. Times, May 9, 1973, at I, col. 7.

192

Washington Post, May 2, 1973, at A, col. 4.

193

Note 191 supra.

194

N.Y. Times, May 14, 1973, at I, col. 7.

195

The Evening Star, May 12, 1973, at A, col. 8.

196

Id.

197

Id.

198

Note 191 supra

199

N.Y. Times, May 9, 1972, at 18, col. 1.

200

Id.

201

Id.

202

Note 139 supra at 764.

203

Navy Times, July 19, 1972, at 36, col. 1.

204

Washington Post, June 4, 1972, at A10, col 1.

205

The Evening Star, May 12, 1972, at A6, col. 7.

206

N.Y. Times, May 12, 1972, at 1, col. 5. According to Pentagon sources, of the 31 vessels which were "trapped" at Haiphong, 12 were of Soviet registry; five are Chinese; three are British, under Hong Kong registry; two were Cuban; three Polish; one East German and five flew the Somali flag. Washington Post, May 12, 1972, at 1, col. 7.

207

Id.

208

N.Y. Times, June 10, 1972, at 10, col. 4.

209

Washington Post, May 14, 1972, at 1, col. 8.

210

N.Y. Times, May 18, 1972, at 1, col. 6.

211

Id.

212

The Sunday Times (London), June 11, 1972, at 1, col. 1.

213

Washington Post, May 14, 1972, at A 11, col. 7.

214

N.Y. Times, June 9, 1972, at 10, col. 4.

215

Washington Post. June 21, 1972, at 1, col. 4.

216

Id.

217

Id.

218

Id.

219

Id.

220

Id.

221

Id.

222

Washington Post, July 13, 1972, at A8, col. 1; Similarly, The Navy Times, July 19, 1972, at 15, col. 1, published 7th Fleet "sitreps" for the period of 19 June to 26 June in which aircraft of the USS Coral Sea were reported to have sunk 13 barges on the 23rd of June while the USS Midway reported sinking 7 supply boats during the same period.

223

The Wall Street Journal, June 22, 1972, at 1, col. 3.

III

10

III

the London Office (London), June 12, 1977, at 1

col. 1

III

Washington Post, May 14, 1977, at 1, col. 7

III

W.F. Times, June 8, 1977, at 10, col. 4

III

Washington Post, June 21, 1977, at 1, col. 4

III

10

III

10

III

10

III

10

III

10

III

10

III

Washington Post, June 17, 1977, at 10, col. 1

Washington Post, June 18, 1977, at 10, col. 1

Washington Post, June 19, 1977, at 10, col. 1

Washington Post, June 20, 1977, at 10, col. 1

Washington Post, June 21, 1977, at 10, col. 1

Washington Post, June 22, 1977, at 10, col. 1

Washington Post, June 23, 1977, at 10, col. 1

III

The New York Times, June 22, 1977, at 1

col. 1

224

Washington Post, July 17, 1972, at A18, col. 6, initially reported that a U.S. laid mine had apparently "broken loose" from its moorings and struck the Warrington. A month later, however, the Navy Times reported that Navy officials were "virtually certain" that North Vietnam or its allies had planted the mine which damaged the Warrington since the mines which were dropped by U.S. A-6 aircraft were the type that remain in a fixed position. Navy Times, August 16, 1972, at 38, col. 1.

225

Id.

226

The Times (London), May 15, 1972, at 6, col. 6.

227

Id.

228

N.Y. Times, June 25, 1972, at 3, col. 5; Washington Post, August 14, 1972, at A 10, col. 1.

229

Washington Post, June 25, 1972, at A4, col. 1.

230

Washington Post, May 9, 1972, at 1, col. 5.

231

Id.

232

N.Y. Times, May 9, 1972, at 1, col. 5.

233

Id.

234

The Evening Star, May 9, 1972, at 1, col. 6.

235

Id.

234

Washington Post, July 17, 1972, at A16, col. 6.
Initially reported that a U.S. land mine had apparently
"broken loose" from its corridor and struck the Washington
A month later, however, the New York Times reported that
Officials were "virtually certain" that North Vietnam or
its allies had planted the mine which damaged the Washington
since the mine which was dropped by U.S. A-1 aircraft
were the type that reside in a fixed position. New York Times
August 16, 1972, at 37, col. 1.

235

Id.

236

The Times (London), May 12, 1972, at 6, col. 6.

237

Id.

238

N.Y. Times, June 27, 1972, at 1, col. 2; Washin-
ton Post, August 14, 1972, at 2, col. 1.

239

Washington Post, June 22, 1972, at A4, col. 1.

240

Washington Post, May 9, 1972, at 1, col. 2.

241

Id.

242

N.Y. Times, May 8, 1972, at 1, col. 6.

243

Id.

244

The Evening Star, May 9, 1972, at 1, col. 6.

245

Id.

236

Washington Post, May 12, 1972, at 1, col. 6.

237

Evening Star, May 9, 1972, at 1, col. 5.

238

N.Y. Times, May 14, 1972 (The Week In Review),
Sec. 4, at 1, col. 3.

239

Id. According to Mr. Ziegler, about 20,000
telegrams had been received at the time of the announce-
ment with a backlog of 17,000 more still waiting to be
delivered by Western Union. Washington Post, May 11, 1972,
at A 18, col. 1.

240

Id.

241

Id.

242

Washington Post, May 12, 1972, at 1, col. 7
reported that "the mines dropped by U.S. warplanes into
the Port of Haiphong and six other North Vietnamese harbors
were activated on schedule at 7 a.m. EDT, Thursday, May 11,
1972.

243

The Evening Star, May 9, 1972, at 1, col. 7.

244

Id.

245

Id.

246

Id.

247

Navy Times, August 2, 1972, at 21, col. 5.

236

Washington Post, May 12, 1972, at 1, col. 4.

237

Evening Star, May 2, 1972, at 1, col. 2.

238

N.Y. Times, May 11, 1972 (The Star to New York).

239

N.Y. Times, May 11, 1972.

240

18. According to Mr. Stedman, about 10,000 telegrams had been received at the time of the announcement with a total of 13,000 more still waiting to be delivered by Western Union. Washington Post, May 11, 1972, at 1, col. 1.

241

19.

242

20.

243

Washington Post, May 12, 1972, at 1, col. 7. Reported that the wires dropped by U.S. wireless into the Port of Baltimore and also other north Atlantic ports were collected on schedules of 7 A.M. EST, Thursday, May 11, 1972.

244

The Evening Star, May 9, 1972, at 1, col. 7.

245

21.

246

22.

247

23.

248

N.Y. Times, August 3, 1972, at 31, col. 2.

248

For the text of the Soviet statement see the translated version contained in the New York Times, May 12, 1972, at 18, col. 1.

249

N.Y. Times, May 12, 1972, at 18, col. 6.

250

Id.

251

Id.

252

Presidential Proclamation No. 3504, 27 Fed. Reg. 10401 (1962) , 47 Dept. State Bull. 717 (1962) and notes 47 and 55 supra. It is interesting to note that while Ambassador Bush's letter of May 8, 1972 to the President of the U.N. Security Council specifically referred to the U.S. mining interdiction measures as " [t]hese measures of collective self-defense," the President, on the other hand, seemed to instead rely on the seriousness of the Communist offensive which "gravely threatens the lives of 60,000 American troops who are still in Viet-nam."

253

McDougal and Feliciano, supra note 8, at 217.

254

Id. at 231.

255

1 Oppenheim - Lauterpacht, International Law 300-01 (8th ed. 1955); 1 Hyde, International Law 239-40, 821-22 (2nd ed. 1945).

256

W. Mallison, "Limited Naval Blockade or Quarantine - Interdiction: National and Collective Defense Claims Valid Under International Law," 31 Geo. Wash. L. Rev. 355 (1962) [hereinafter cited as Mallison].

257

McDougal and Feliciano, supra note 8, at 242.

246
For the text of the Soviet statement see
the translated version appearing in the New York Times,
May 12, 1957, p. 18, col. 1.

247
N.Y. Times, May 11, 1957, p. 18, col. 1.

248
Id.

249
Id.

250
Soviet statement, p. 18, col. 1, May 11, 1957.
1957 (1957), 17 Dept. State Affs. 717 (1957) and notes
47 and 52 there. It is interesting to note that while
ambassador's letter of May 8, 1957 to the President
of the U.S. Security Council specifically referred to the
U.S. mining interdiction measures as "dislike measures"
in collective self-defense, the President, on the other
hand, seemed to insist rely on the righteousness of the
Communist offensive which "seriously threatens the lives
of 60,000 American people who are still in Vietnam."

251
Molotov and Vishinskiy, speech notes, p. 247.

252
Id., at 247.

253
I. Gromyko - Statement, International Law
300-01 (1957) at 1957; I. Gromyko, International Law 333-34;
321-32 (1957).

254
G. Malinova, United States Includes no Commun-
ism - Information, National and Collective Defense
Division (1957) United States Information Law, 11 Col. 1957, 1.
Rev. 122 (1957) Information (1957) at 122.

255
Molotov and Vishinskiy, speech notes, p. 247.

258

Mallison, supra note 256, at 392.

259

Text of Presidential News Conference, supra note 1, at 748.

260

Text of Soviet statement on mining in Vietnam is contained in The New York Times, May 14, 1972, at 18, cols. 1 and 6 respectively.

261

Id.

262

N. Alford, U.S. Naval War College, International Law Studies 272 (1963) [hereinafter cited as Alford].

263

Note 139 supra at 764.

264

Article 16 3., Convention on the Territorial Sea and the Contiguous Zone, U.N. Doc. A/CONF. 13/L.52.

265

Vietnam Decree on Sea Surveillance Communiqué of the Ministry of Foreign Affairs, April 27, 1965, 4 International Legal Materials 461 (1965).

266

Note 7 supra.

267

Note 1 supra, at 749.

268

Kunz, "Sanctions in International Law," 54 Am. J. Intl. L. 324 (1960).

269

Studies in the Law of Naval Warfare, supra note 119, at 95.

270

Presidential Proclamation No. 3504, 27 Fed. Reg. 10401 (1962), 47 Dept. State Bull. 717 (1962).

- 271
Note 138 supra.
- 272
See notes 3 and 4 supra.
- 273
Cagle and Manson, The Sea War in Korea 281 (1957)
- 274
47 Dept. State Bull. 740.
- 275
Id.
- 276
Dept. of Defense News Release No. 1835-62,
Nov. 12, 1962.
- 277
Id.
- 278
See note 105 supra.
- 279
McDougal and Feliciano, supra note 8, at 490.
- 280
Oppenheim- Lauterpacht, supra note 15, at 779.
- 281
See "Rights and Duties of Neutral Powers in
Naval Aerial War," 33 Am. J. Intl. L. Supp. 711 (1939).
- 282
H. Lauterpacht, supra note 15, at 792.
- 283
McDougal and Feliciano, supra note 8, at 491.
- 284
Id. at 492.
- 285
Lauterpacht, supra note 15, at 776.

271

See note 122 supra.

272

See notes 2 and 4 supra.

273

See note 122 supra, The New York Times (1947)

274

47 Genev. State Bull. 140.

275

Id.

276

Dept. of Defense News Release No. 1946-41.

Nov. 12, 1947.

277

Id.

278

See note 122 supra.

279

Memorandum and Collection, supra note 4, at 420.

280

Memorandum and Collection, supra note 4, at 420.

281

See "Rights and Duties of Neutral Powers in Naval Warfare," 21 Am. J. Intl. L. 600 (1927).

282

U. S. Department of State, supra note 12, at 700.

283

Memorandum and Collection, supra note 4, at 421.

284

Id. at 422.

285

Memorandum and Collection, supra note 12, at 700.

286

Id.

287

Studies in the Law of Naval Warfare, supra note 119, at 57.

288

Id.

289

See notes 20 and 21 supra.

290

New York Times, October 25, 1962; Para. No. 5982, Notice to Mariners No. 45, 1962.

291

In his May 8th address, President Nixon told his audience that "these actions are not directed against any other nations. Countries with ships presently in North Vietnamese ports have already been notified that their ships have three daylight periods [in which] to leave in safety." Text of Presidential News Conference, supra note 1, at 749.

292

The Times (London), May 15, 1972, at 1, col. 1. contained an article captioned "Washington Reports of Mine Deals" wherein a statement attributed to Senator Hugh Scott, the Republican Minority Leader, referred to the "hopeful" possibility that the Soviet reaction to the mining of North Vietnamese ports had been worked out privately in advance.

293

See Appendix B.

294

See note 203 supra.

295

L. Martin, The Sea in Modern Strategy 160 (1968) [hereinafter cited as Martin].

286
Ed.

287
referred in the Law of North Vietnam. Article 10
1961, No. 27.

288
I.

289
See notes 20 and 21 above.

290
New York Times, October 25, 1962, para. 60. 1962
Notice to Maritime No. 42, 1962.

291
In his May 25th address, President Nixon told
his audience that "these actions are not directed against
any other nation. Countries with which we are friendly in North
Vietnam have already been notified that their ships
have three daylight periods (in which) to leave in safety."
Text of Presidential News Conference, para. 1, at 749.

292
The Times (London), May 15, 1962, at 1, col. 1.
contained an article captioned "Washington Report of
the United States a statement attributed to Senator
Burr Scott, the Republican Minority Leader, related to
the 'honest' possibility that the Soviet reaction to the
warning of North Vietnamese ports had been worked out
privately in advance.

293
See Appendix B.

294
See note 201 above.

295
J. Martin, The Sea in Modern Vietnam 160 (1962)
(hereinafter cited as Martin).

296

Id.

297

See note 58 supra.

298

Id.

299

Text of Presidential address, note 1 supra, at 749.

300

Martin, supra note 295, at 157.

301

Moore, note 7 supra.

302

McDougal and Feliciano, supra note 8, at 493.

303

Id. at 494.

304

See McDougal and Feliciano, supra note 8, at 495n.271. The obsolete character of Art. 2 of Hague Convention VIII, 1907, (text of the Hague Conventions and the Declarations of 1899 and 1907 are contained in (2nd ed., Scott, 1915) prohibiting the laying of automatic contact mines off enemy coasts and ports for "the sole object of intercepting commercial shipping" is commonly conceded.

305

Id.

306

Text of Presidential address, note 1 supra, at 749.

307

Id. at 747.

308

See note 172 supra.

292
Id.

293
See note 28 supra.

294
Id.

295
Text of Presidential address, note 1 supra, at 149.

296
Martin, supra note 292, at 157.

297
Moore, note 7 supra.

298
McDonald and Welland, supra note 8, at 232.

299
Id. at 234.

300
See McDonald and Welland, supra note 8, at 232-233. The opinion character of Art. 1 of the Convention VII, 1907 (Text of the Hague Convention and the Declaration of 1899 and 1907 was contained in (2nd ed., note 1, 1912) prescribing the laying of submarine cables since of many courts and courts for the sole object of international commercial shipping is commonly conceded.

301
Id.

302
Text of Presidential address, note 1 supra, at 149.

303
Id. at 147.

304
See note 172 supra.

- 309 von Glahn, supra note 43, at 510.
- 310 See note 224 supra.
- 311 The Paquete Habana, 175 U.S. 677 (1900).
- 312 175 U.S. 677, 708 (1900).
- 313 N.Y. Times, May 14, 1972, at 28, col. 5.
- 314 Id.
- 315 Sorensen, supra note 3.
- 316 Chaves, supra note 4.
- 317 Washington Post, May 23, 1972, at 1, col. 3.
- 318 N.Y. Times, May 24, 1972, at 1, col. 1.
- 319 Id.
- 320 Washington Post, June 26, 1972, at 1, col. 4.
- 321 Washington Post, July 23, 1972, at A31, col. 3.
- 322 N.Y. Times, July 29, 1972, at 1, col. 5.
- 323 Washington Post, July 24, 1972, at A 10, col. 2.
- 324 Washington Post, June 29, 1972, at A 17, col. 1.

- 303 Von Olabin, unpubl. note 43, no. 510.
- 310 unpubl. note 524 p. 178.
- 312 The Panama Papers, 175 U.S. 677 (1900).
- 313 175 U.S. 677, 708 (1900).
- 314 N.Y. Times, May 19, 1973, at 37, col. 2.
- 315 unpubl. note 3.
- 316 unpubl. note 4.
- 317 Washington Post, May 23, 1973, at 1, col. 3.
- 318 N.Y. Times, May 24, 1973, at 1, col. 1.
- 319 unpubl. note 5.
- 320 Washington Post, June 18, 1973, at 1, col. 1.
- 321 Washington Post, July 18, 1973, at 1, col. 1.
- 322 N.Y. Times, July 19, 1973, at 1, col. 1.
- 323 Washington Post, July 20, 1973, at 1, col. 2.
- 324 Washington Post, June 27, 1973, at 1, col. 1.

325

Id.

326

N.Y. Times, June 28, 1972, at 1, col. 5.

327

Washington Post, July 13, 1972, at A 33, col. 1.

328

Lott, supra note 76, at 47.

325
10.

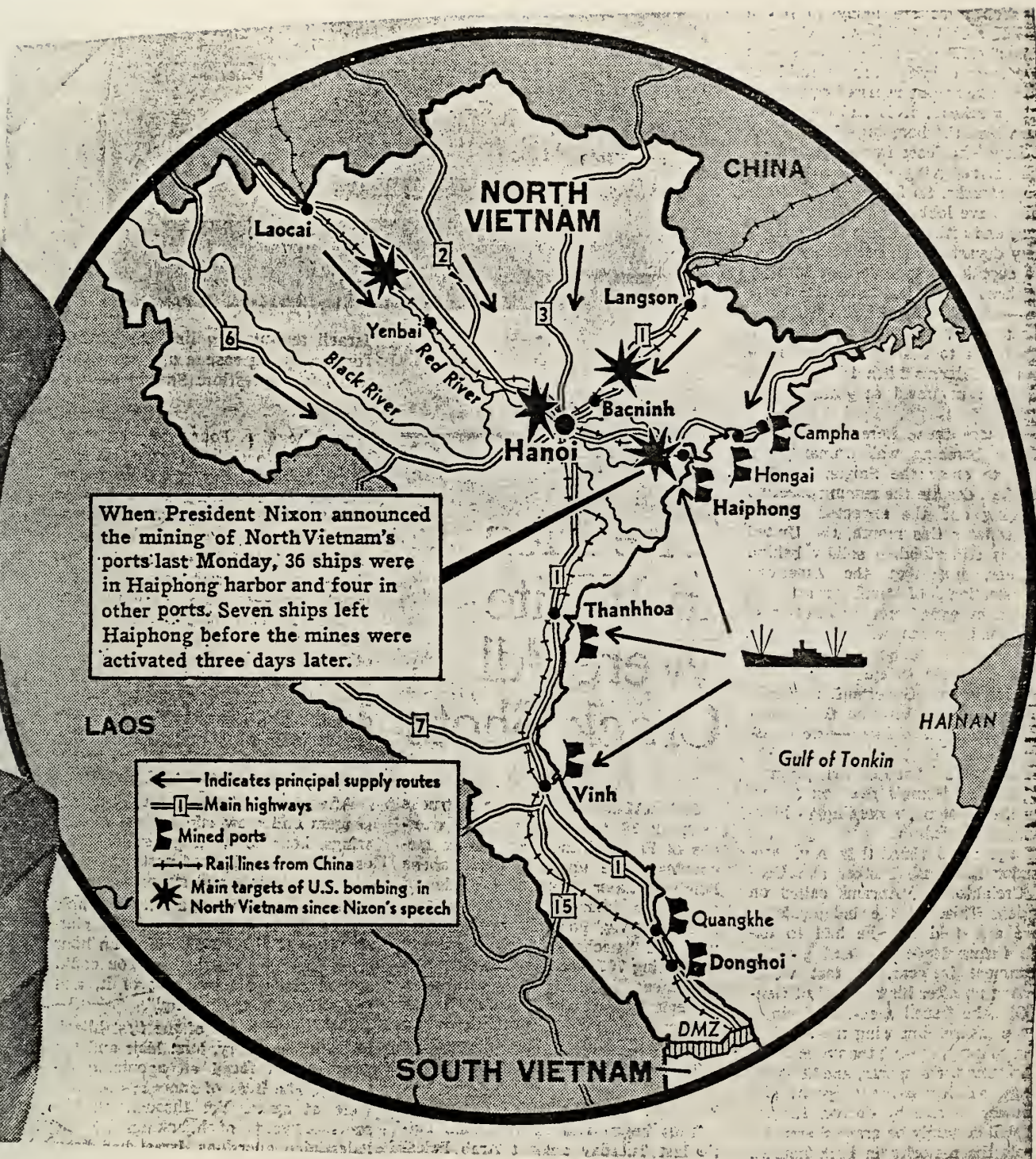
326
W. C. Brown, June 28, 1878, at 1, vol. 1.

327
Washington Post, July 11, 1878, at 2, vol. 1.

328
Last entry note 78, at 47.

Pictorial Map of Mined North Vietnamese Ports
The New York Times (Week in Review),
May 14, 1972, Section 4, at 1, col. 1.

Pictorial Map of North Vietnam
The New York Times (Week in Review),
May 14, 1972, Section 4, at 1, col. 1.





U.S. Navy, Unclassified Message providing
Special Warning No. 42 to all Mariners.
Date-time-group 09090147Z (9 May 1972).

U.S. Navy, Unclassified Messages providing
Special Warning No. 42 to all Mariners.
Date-time-group 000001478 (9 May 1972).

NAVAL MESSAGE

*****U N C L A S S I F I E D*****

NAVY DEPARTMENT

C2

IMMEDIATE

0 090301Z MAY 72

FM JCS

INTEL CSA

CNU

ANMCC

0 090147Z MAY 72

FM NAVAL OCEANOGRAPHIC OFFICE WASHDC

TO ALL SHIPS AND AFLOAT COMMANDS COPYING THE FLEET AND COMPOSITE BCST

INFO AIG NINE TWO EIGHT ZERO

STATE DEPT

NSD

JCS

MARITIME ADMIN

USCG

COMIDEASTFOR

OCEANAV

COMSC

COMNAVINTCOM

COMSCFE

UNCLAS //NO2112//

SPECIAL WARNING NO 42:

1. ALL MARINERS ARE ADVISED THAT THE UNITED STATES HAS ANNOUNCED THAT, IN FULL COORDINATION WITH THE REPUBLIC OF VIETNAM, THE INTERNAL AND CLAIMED TERRITORIAL WATERS OF THE DEMOCRATIC REPUBLIC OF VIETNAM IN AND AROUND THE ENTRANCES TO THE PORTS OF HAIPHONG, HON GAI, CAM PHA, VINH, QUANG KHE, DONG HOI, AND THANH HOA, ARE BEING MINED BY THE UNITED STATES AS A PART OF THE COLLECTIVE DEFENSE EFFORTS IN RESPONSE TO THE NEW ARMED ATTACKS BY THE DEMOCRATIC REPUBLIC OF VIETNAM AGAINST THE REPUBLIC OF VIETNAM AND THE UNITED STATES FORCES REMAINING IN THAT COUNTRY. THE MINE FIELDS WILL BE ACTIVATED AT 1100Z, 11 MAY 1972. VESSELS TRANSITING THESE WATERS AFTER THAT DATE MUST DO SO AT THEIR OWN RISK.

2. ADDITIONALLY, ALL VESSELS ARE ADVISED THAT THE NAVAL AND AIR FORCES OF THE UNITED STATES AND THE REPUBLIC OF VIETNAM HAVE BEEN DIRECTED TO TAKE APPROPRIATE MEASURES WITHIN THE INTERNAL AND CLAIMED TERRITORIAL WATERS OF NORTH VIETNAM TO PREVENT THE DELIVERY OF SEABORNE SUPPLIES TO NORTH VIETNAM.

3. THE NAVAL FORCES OF THE REPUBLIC OF VIETNAM AND THE UNITED

23(1) ...CNU

943(5) NMIC(6) DFK(1)

APPENDIX B

AFP/

0011 G 016

CONTROL NO.	PAGE	OF	PAGE	TIME OF RECEIPT	DATE TIME GROUP
134527/130	1		2	130/03:02Z	090147Z MAY 72
CSN:DTR 5968					

*****U N C L A S S I F I E D*****

TO JAN 73
13 JUN 74
13 DEC 74
1 SEP 75
22 DEC 78

21172
22047
23050
22552
25084

Thesis 135644
C48066 Clark

A juridicial analysis
of recent evolutionary
developments concerning
naval interdiction of
seaborne commerce as a
viable sanctioning de-
vice.

TO JAN 73
13 JUN 74
13 DEC 74
1 SEP 75

21172
22047
23050
22552

sis
ry
ing

Thesis
C48066 Clark

135644

A juridicial analysis
of recent evolutionary
developments concerning
naval interdiction of
seaborne commerce as a
viable sanctioning de-
vice.

thesC48066

A juridical analysis of recent evolution



3 2768 002 10253 5

DUDLEY KNOX LIBRARY